

Harpsden Parish Council

Introduction

This Briefing updates L08-12 and it should be read in conjunction with Legal Topic Note 80 dated 21 June 2012. NALC's template code of conduct has been finalised and is attached.

NALC's template code of conduct incorporates a member's new mandatory obligations in the Localism Act 2011 ('the 2011 Act') concerning 'disclosable pecuniary interests' which come into force on 1 July 2012. Disclosable pecuniary interests are defined in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 (SI 2012/1464). They are set out in Legal Briefing L10-12.

Important information (explained in detail in LTN 80 and Legal Briefing L10- 12)

1. The code of conduct adopted by a parish council in satisfying its duties in s.51 of the Local Government Act 2000 **ceases** to have effect on 1 July 2012 (paragraph 56 of schedule 4 of the 2011 Act).
2. An undertaking to comply with a code of conduct given by a person under s.52 of the Local Government Act 2000 or as part of a declaration of acceptance of office in a form prescribed by order under s.83 of the Local Government Act 1972 ceases to have effect when the parish council's existing code **ceases** to have effect on 1 July 2012 (paragraph 56 of schedule 4 of the 2011 Act).
3. The Localism Act 2011 (Commencement No.6 and Transitional, Savings and Transitional Provisions) Order 2012 ('the 2012 Regulations'), brought into force on 7 June 2012, confirms :-
 - a parish council must, pursuant to s.27 of the 2011 Act, adopt a new code of conduct which complies with the provisions of s. 28 of the 2011 Act **to take effect on or after 1 July 2012.**
 - the district/ unitary authority's Monitoring Officer must prepare a register of interests for members of parish councils in the principal authority's area **to take effect on or after 1 July 2012.**
4. The 2012 Regulations also confirm that on 1 July, a member of a parish council is at risk of prosecution for committing criminal offences in s.34 of the 2011 Act if:-
 - he/she, without a dispensation, participates or votes on a matter being considered at a meeting in which he/she has a 'disclosable pecuniary interest' (s.31(4) of the 2011 Act) or
 - written notification of such disclosable pecuniary interest has not already been given to the Monitoring Officer, and the member does not disclose the disclosable pecuniary interest to the meeting and does not provide written notification of the interest to the Monitoring Officer within 28 days of the meeting (ss.31(2) and (3) of the 2011 Act) or

- he/she knowingly or recklessly provides false or misleading information about the above (s.34(2) of the 2011 Act).

Advice

A parish council has a duty to adopt a new code of conduct.

After 6 June 2012, a parish council must adopt a new code of conduct (which may or may not be based on the NALC template code of conduct) to take effect on 1 July 2012 or as soon as possible thereafter. A member's mandatory obligations relating to prescribed disclosable pecuniary interests are incorporated in the NALC template code of conduct. If a parish council adopts the NALC template, its members are also required to register disclosable pecuniary interests within 28 days of adoption of the code.

For the period that a parish council has no code of conduct (because its code ceased to have effect on 1 July 2012 and it has not resolved to adopt a new code of conduct), members of the parish council are still subject to the mandatory obligations in the 2011 Act in relation to disclosable pecuniary interests (summarised above) from 1 July 2012.

Useful reminders

The function of adopting, revising or replacing a code of conduct must be discharged by full council (s.28(13) of the 2011 Act). A parish council must publicise its adoption (and in future any revision or replacement) of a code of conduct in such manner as it considers is likely to bring the adoption, revision or replacement of the code of conduct to the attention of persons who live in its area (s. 28(12)).

Whilst members of a parish council may provide written notification of interests (including disclosable pecuniary interests) to the Monitoring Officer, most Monitoring Officers are likely to prepare a standard register of interests form for members of parish councils to complete. Members of parish councils should liaise directly with the Monitoring Officer about providing written notifications about their interests.

This briefing was issued by Meera Tharmarajah, Solicitor and Head of Legal Services

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FINAL

NALC template code of conduct for parish councils

Introduction

Pursuant to section 27 of the Localism Act 2011, X [Parish/Town/Village/Community/Neighbourhood] Council ('the Council') has adopted this Code of Conduct to promote and maintain high standards of behaviour by its members and co-opted members whenever they conduct the business of the Council, including the business of the office to which they were elected or appointed, or when they claim to act or give the impression of acting as a representative of the Council.

This Code of Conduct is based on the principles of selflessness, integrity, objectivity, accountability, openness, honesty, and leadership.

Definitions

For the purposes of this Code, a 'co-opted member' is a person who is not a member of the Council but who is either a member of any committee or sub-committee of the Council, or a member of, and represents the Council on any joint committee or joint sub-committee of the Council, and who is entitled to vote on any question that falls to be decided at any meeting of that committee or sub-committee.

For the purposes of this Code, a 'meeting' is a meeting of the Council, any of its committees, sub-committees, joint committees or joint sub-committees.

For the purposes of this Code, and unless otherwise expressed, a reference to a member of the Council includes a co-opted member of the Council.

Member obligations

When a member of the Council acts, claims to act or gives the impression of acting as a representative of the Council, he/she has the following obligations.

1. He/she shall behave in such a way that a reasonable person would regard as respectful.
2. He/she shall not act in a way which a reasonable person would regard as bullying or intimidatory.
3. He/she shall not seek to improperly confer an advantage or disadvantage on any person.
4. He/she shall use the resources of the Council in accordance with its requirements.
5. He/she shall not disclose information which is confidential or where disclosure is prohibited by law.

Registration of interests

6. Within 28 days of this Code being adopted by the Council, or the member's election or the co-opted member's appointment (where that is later), he/she shall register with the Monitoring Officer the interests which fall within the categories set out in Appendices A and B.
7. Upon the re-election of a member or the re-appointment of a co-opted member, he/she shall within 28 days re-register with the Monitoring Officer any interests in Appendices A and B.

8. A member shall register with the Monitoring Officer any change to interests or new interests in Appendices A and B within 28 days of becoming aware of it.
9. A member need only declare the existence but not the details of any interest which the Monitoring Officer agrees is a 'sensitive interest'. A sensitive interest is one which, if disclosed on a public register, could lead the member or a person connected with the member to be subject to violence or intimidation.

Declaration of interests at meetings

10. Where a matter arises at a meeting which relates to an interest in Appendix A the member shall not participate in a discussion or vote on the matter. He/she only has to declare what his/her interest is if it is not already entered in the member's register of interests or if he/she has not notified the Monitoring Officer of it.
11. Where a matter arises at a meeting which relates to an interest in Appendix A which is a sensitive interest, the member shall not participate in a discussion or vote on the matter. If it is a sensitive interest which has not already been disclosed to the Monitoring Officer, the member shall disclose he/she has an interest but not the nature of it.
12. Where a matter arises at a meeting which relates to an interest in Appendix B, the member shall not vote on the matter. He/she may speak on the matter only if members of the public are also allowed to speak at the meeting.
13. A member only has to declare his/her interest in Appendix B if it is not already entered in his/her register of interests or he/she has not notified the Monitoring Officer of it or if he/she speaks on the matter. If he/she holds an interest in Appendix B which is a sensitive interest not already disclosed to the Monitoring Officer, he/she shall declare the interest but not the nature of the interest.

14. Where a matter arises at a meeting which relates to a financial interest of a friend, relative or close associate (other than an interest in Appendix A), the member shall disclose the nature of the interest and not vote on the matter. He/she may speak on the matter only if members of the public are also allowed to speak at the meeting. If it is a 'sensitive interest' the member shall declare the interest but not the nature of the interest.

Dispensations

15. On a written request made to the Council's proper officer, the Council may grant a member a dispensation to participate in a discussion and vote on a matter at a meeting even if he/she has an interest in Appendices A and B if the Council believes that the number of members otherwise prohibited from taking part in the meeting would impede the transaction of the business; or it is in the interests of the inhabitants in the Council's area to allow the member to take part or it is otherwise appropriate to grant a dispensation.

Appendix A

Interests described in the table below.

Subject	Description
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the Council) made to the member during the 12 month period ending on the latest date referred to in paragraph 6 above for expenses incurred by him/her in carrying out his/her duties as a member, or towards his/her election expenses.
	This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
Contracts	Any contract made between the member or his/her spouse or civil partner or the person with whom the member is living as if they were spouses/civil partners (or a firm in which such person is a partner, or an incorporated body of which such person is a director* or a body that such person has a beneficial interest in the securities of*) and the Council —
	(a) under which goods or services are to be provided or works are to be executed; and
	(b) which has not been fully discharged.
Land	Any beneficial interest in land which is within the area of the Council. 'Land' excludes an easement, servitude, interest or right in or over land which does not give the member or his/her spouse or civil partner or the person with whom the member is living as if they were spouses/civil partners (alone or jointly with another) a right to occupy or to receive income.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the Council for a month or longer.
Corporate tenancies	Any tenancy where (to the member's knowledge)—
	(a) the landlord is the Council; and
	(b) the tenant is a body that the member, or his/her spouse or civil partner or the person with whom the member is living as if they were spouses/civil partners is a partner of or a director* of or has a beneficial interest in the securities* of.
Securities	Any beneficial interest in securities* of a body where—
	(a) that body (to the member's knowledge) has a place of business or land in the area of the Council; and
	(b) either—
	(i) the total nominal value of the securities* exceeds £25,000 or one hundredth of the total issued share 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 the member, or his/her spouse or civil partner or the person with whom the member is living as if they were spouses/civil partners has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

*'director' includes a member of the committee of management of an industrial and provident society.

*'securities' means shares, debentures, debenture stock, loan 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.

Appendix B

An interest which relates to or is likely to affect:

- (i) any body of which the member is in a position of general control or management and to which he/she is appointed or nominated by the Council;

- (ii) any body—
 - (a) exercising functions of a public nature;
 - (b) directed to charitable purposes; or
 - (c) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union)
of which the member of the Council is a member or in a position of general control or management;

- (iii) any gifts or hospitality worth more than an estimated value of £50 which the member has received by virtue of his or her office.

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