

## **ETHICAL STANDARDS FOR MEMBERS**

### **Standards Committee – 22 January 2015**

Report of                      Monitoring Officer

Status:                         For consideration

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**Executive Summary:** The Standards Committee of Sevenoaks District Council keeps a watching brief on the standards regime in local government and how this is developing and any recent published works on ethics in general and reminds Members of their duties under the Code of Conduct as well as the need to keep their Register of Interests up to date.

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**This report supports the Key Aim of** effective management of Council resources.

**Contact Officer(s)**     Mrs Christine Nuttall – Chief Officer Legal and Governance

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**Recommendation to the Standards Committee:** That the guidance set out in this report be noted.

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**Reason for recommendation:** to make Members aware of the recent guidance and developments in relation to ethical standards and to remind Members of the requirements of the Standards regime.

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### **Introduction and Background**

- 1     The Standards Committees role at Sevenoaks District Council (SDC) includes the promotion and maintenance of high standards of conduct by Members and Co-opted Members of SDC and to advise and assist Parish/Town Councils and Parish/Town Councillors to maintain high standards of conduct. As a result it is useful for this Committee to consider the work of other bodies concerned with standards, such as the Committee on Standards in Public Life and other published works to ensure that Members are aware of current developments and issues surrounding standards generally.
- 2     It is essential that there is public confidence that Councillors everywhere are putting the public interest first and are not benefitting their own financial affairs from being Councillors.

#### **Recent publications**

- 3     The Department for Communities and Local Government (DCLG) have produced guidance entitled “Openness and transparency on personal interests”. This sets out in plain language matters such as:
  - Does the new Standards Regime put in place in 2012 affect me?

- How will there be openness and transparency about my personal interests?
- What personal interests should be entered in my council's or authority's register of members' interest?
- What must I do about registering my personal interests?
- What are pecuniary interests?
- Do I have any disclosable pecuniary interests?
- Does my spouse's or civil partner's name need to appear on the register of interests?
- Does my signature need to be published online? Won't this put me at risk of identity theft?
- Who can see the register of members' interests?
- Is there any scope for withholding information on the published register?
- When is information about my interests removed from my council's register of members' interests?
- What does having a disclosable pecuniary interest stop me doing?
- Where these prohibitions apply, do I also have to leave the room?
- Do I need a dispensation to take part in the business of setting council tax or a precept?
- When and how can I apply for a dispensation?
- What happens if I don't follow the rules on disclosable pecuniary interests?
- Where can I look at the national rules on pecuniary interests?

The guidance can be found by following the link [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/240134/Openness\\_and\\_transparency\\_on\\_personal\\_interests.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/240134/Openness_and_transparency_on_personal_interests.pdf). It is especially important that Members become familiar with this document and take notice of the guidance therein as recent information from the Local Government Lawyer published on the 18<sup>th</sup> November 2014 informed us that the Crown Prosecution Service has authorised the police to institute proceedings against the leader of Dorset County Council for three offences under the Localism Act. The publication stated that it is alleged that whilst the Councillor was leader of East Dorset District Council, he failed to declare his interest in a company for which he was a Non-Executive Director. It is also alleged that he failed to declare his interest in the same company to Dorset County Council. The third allegation relates to the Councillor's failure to disclose his interest in a housing company in which he was also a Non Executive Director, before a meeting of Dorset County Council on 25<sup>th</sup> February 2013 at which its Core Strategy for the provision of social

housing was discussed. It is alleged that the Councillor participated and voted during this meeting. He pleaded not guilty at the Magistrates Court on 2 December 2014, the case has been adjourned and will be heard in April 2015.

- 4 The DCLG have also issued guidance on “Disclosable Pecuniary Interests and Dual-Hatted Councillors in a letter produced by Brandon Lewis MP dated 17 January 2013 (Appendix A). The letter concentrates on whether being a Member of both a District Council and a Town Council would prevent a District Councillor from participating in Town Council business on the grounds that their membership of the District Council gives rise to a disclosable pecuniary interest in any issue involving the District Council.

The DCLG’s informal view was that where a Councillor receives a taxable allowance from any authority of which they are a Member, the allowance would give rise to a disclosable pecuniary interest that should be entered on the registers of interests under “Employment, office, trade, profession or vocation. However, the question of whether a councillor has a disclosable pecuniary interest in an item of council business related to another authority of which he is a Member will depend on the nature of which is to be discussed. The prohibitions on Councillors participating in any discussion or vote on an item of Council business in which they have a disclosable pecuniary interest ensures that Councillors cannot put their private financial interests before the public interest. However, where a Councillor has a disclosable pecuniary interest but stands to make no personal financial gain by participating in a discussion or vote on council business related to that interest they can apply for a dispensation, under section 33 of the Localism Act 2011. The grounds for granting a dispensation will depend on the circumstance.

- 4 In January 2013 the Committee on Standards in Public Life produced a publication entitled “Standards matters – A review of best practice in promoting good behaviour in public life” A copy of this publication can be found by following the link [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/228884/8519.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/228884/8519.pdf).

A number of areas within the publication are relevant to the work of this Committee. In relation to Local Government Standards the publication states:

“...prime responsibility for maintaining high standards of behaviour must always lie with individuals and organisations, not with external regulation. We welcome therefore the intention behind the Localism Act 2011 to encourage a greater sense of responsibility for standards and to address some of the more vexatious and disproportionate aspects of the local government standards regime.

To function effectively, local leadership and responsibility for standards requires certain conditions to be met – including strong leadership and robust, visible action against those who fall short. The Local Government Association has a particular important responsibility in this respect. We would expect the new regime, like the previous one to function well in those areas where party leaders are prepared to provide leadership. It is likely to do less well where such leadership is absent. Past history suggests that problems are most likely in areas with monolithic political cultures and correspondingly little political challenge, where partisan rivalry is most bitter and tit for tat accusations most common, or in

those predominantly rural areas with significant numbers of independent members without the benefit of party discipline.

We have other concerns about the new arrangements which apply even in those areas where strong leadership on standards does exist. The first is that under the previous arrangements local authorities had the power to suspend members for varying periods of time as a sanction against poor behaviour. The only sanctions, now available, apart from through the use of party discipline, are censure or criminal prosecution for deliberately withholding or misrepresenting a financial interest. We do not think these are sufficient. The last few years have seen a number of examples of inappropriate behaviour which would not pass the strict tests required to warrant a criminal prosecution, but which deserves a sanction stronger than simple censure. Bullying of other members or officers is one category of offence which will be difficult to deal with adequately under the new arrangements.

Our second concern is about the new and so far relatively untested arrangements for independent involvement in the disciplinary process. Under the previous arrangements allegations about poor behaviour were determined by standards committees independently chaired by individuals who were not themselves members of the local authority. Under the new arrangements every local authority must appoint at least one independent person whose views it will seek, and take into account, before making its decision on an allegation that it has decided to investigate. We doubt that this will be sufficient to provide assurance that justice is being done and, equally important, that it is seen to be done”.

Similar concerns as set out above were expressed by many local authorities at the time the Localism Bill was being discussed. However, from SDC’s findings the work of the Independent Persons appointed have proved invaluable and their efforts have been well respected by those involved in the complaint’s procedure.

- 6 Another publication recently published by the Committee on Standards in Public Life is entitled “Ethics in Practice: Ethical Conduct in Public Life” July 2014. This publication highlights to those in public life that the recommendations of Lord Nolan in his First Report continue to apply: *it is essential that more is done to inculcate high ethical standards through guidance, education, and training, particularly induction training.*

This publication can be viewed by following the link  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/336976/2902536\\_CSPL\\_EthicsInPractice\\_acc.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/336976/2902536_CSPL_EthicsInPractice_acc.pdf)

SDC has always concentrated heavily on training and support for its Members including Members and Clerks of Town and Parish Councils. Training for all Members especially new Members of SDC in relation to the Code of Conduct and the Standards regime is planned as part of the induction process following the Elections in May 2015 to which Town and Parish Clerks will also be invited to attend.

## Members Register of Interests

- 7 Members are reminded to keep their interest forms under review and register new interests or delete obsolete interests within 28 days by completing a new Members' Interest Form. Members are also reminded to register gifts and hospitality worth £25 or more received in their capacity as a Member of the Authority. However, Members are reminded to treat with extreme caution any offer or gift, favour or hospitality that is made to them personally.

SDC has a Protocol on Gifts and Hospitality and in addition there is Guidance on the Disclosure of Confidentiality by Members set out in the Constitution which can be downloaded from the Council's website or alternatively requests for such guidance can be made to the Democratic Services Team

<http://cds.sevenoaks.gov.uk/ecSDDisplay.aspx?NAME=Constitution%20of%20Sevenoaks%20District%20Council&ID=844&RPID=5869429&sch=doc&cat=13284&path=13284>

## Predetermination and the Code

- 8 The Localism Act 2011 clarified the law surrounding bias or predetermination. Predetermination is a term used to describe a state of mind which is capable of breaching the law. This is not to be confused with predisposition where a Councillor holds a view in favour of or against an issue, for example an application for planning permission, but they have an open mind to the merits of the argument before they make the final decision at the Council meeting. This includes having formed a preliminary view about how they will vote before they attend the meeting, and expressing that view publicly.

There are two types of predetermination, actual and apparent. Actual predetermination is when a person has closed their mind to all considerations other than an already held view. Apparent predetermination is where the fair minded and well-informed observer, looking objectively at all the circumstances, considers that there is a real risk that one or more of the decision makers has refused even to consider a relevant argument or would refuse to consider a new argument.

The Localism Act states that a decision maker is not to be taken to have had, or to have appeared to have had, a closed mind when making the decision just because the decision maker had previously done anything that directly or indirectly indicated what view the decision maker took, or would or might take, in relation to a matter, and the matter was relevant to the decision.

It is well recognised that manifesto commitments and policy statements which are consistent with a preparedness to consider and weigh relevant factors when reaching the final decision, are examples of legitimate predisposition and not predetermination. To suspect predetermination because all members of a single political group have voted a certain way is an unwarranted interference with the democratic process. Councillors are likely to have and are entitled to have, a disposition in favour of a particular decision. Unless there is positive evidence that there was indeed a closed mind, prior observations or apparent favouring of a particular decision is unlikely to be sufficient to establish predetermination. Previously expressed views on matters which arise for decision in the ordinary run

of events are routine and councillors can be trusted, whatever their previously expressed views, to approach decision making with an open mind.

## **Key Implications**

### Financial

There are no direct financial implications arising out of this report.

### Legal Implications and Risk Assessment Statement.

Under the Localism Act 2011, the Council is required to promote and maintain high standards of conduct by Members and Co-opted Members of the authority. In addition, the Standards Committee's terms of reference state that the Committee is to promote and maintain high standards of conduct by Members and Co-opted Members of the District Council and to make recommendations to the Council on improving standards.

Failure to have and maintain high ethical standards can have significant reputational consequences. However, by keeping Members informed in relation to recent guidance and developments within the Standards regime helps to set and maintain high standards of behaviour amongst Members, staff and partner organisations which can significantly enhance reputation and can reduce the risk of wrongdoing.

### Equality Assessment

The decision recommended through this paper has a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

## **Conclusions**

- 12 The publications mentioned in this report provide details on ethical issues that have been considered by the Committee on Standards in Public Life and the DCLG. They give valuable information on the developing Standards regime and remind Members of their responsibilities under the Code of Conduct.

## **Appendices**

DCLG's letter dated 17<sup>th</sup> January 2013 from Brandon Lewis MP entitled "Disclosable Pecuniary Interests and Dual-Hatted Councillors

## **Background Papers:**

[SDC's Constitution](#)

[Standards matter A review of best practice in promoting good behaviour in public life January 2013 produced by the Committee on Standards in Public Life](#)

[Ethics in Practice: Promoting Ethical Conduct in Public Life July 2014 produced by the Committee on Standards in Public Life](#)

[DCLG's publication September 2013 Openness and transparency on personal interests](#)

DCLG's letter dated 17<sup>th</sup> January 2013 from  
Brandon Lewis MP entitled "Disclosable Pecuniary  
Interests and Dual-Hatted Councillors

[Local Government Lawyer publications 12/12/2014  
"Council leader faces proceedings over failure to  
disclose pecuniary interests"](#)

[BBC News Dorset 2/12/2014 "Dorset County  
Council leader Spencer Flower quits ahead of trial"](#)

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