

TONBRIDGE & MALLING BOROUGH COUNCIL

JOINT STANDARDS COMMITTEE

11 FEBRUARY 2014

Report of the Director of Central Services & Monitoring Officer

Part 1- Public

For Information

1 OPENNESS AND TRANSPARENCY ON PERSONAL INTERESTS – A GUIDE FOR COUNCILLORS

1.1 Introduction

1.1.1 This report advises the Committee of recent guidance issued by the Department for Communities and Local Government.

1.1.2 The guidance and covering letter is attached to this report as **Annex 1**.

1.2 Key points

1.2.1 The guidance draws attention to the seven statutory principles of public life, and in particular to the principle of integrity. The guidance is intended to give practical information about how members are to be open and transparent about their personal interests.

Trade Union membership

1.2.2 One particular area of the guidance relates to trade union membership. It states 'All sitting councillors need to declare their declarable interests – both declarable pecuniary interests, and other interests that must be declared and registered 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'.

1.2.3 There is no specific requirement in the regulations made under the Localism Act to disclose *membership* of a trade union as a Disclosable Pecuniary Interest. The regulations require that members disclose any sponsorship i.e. any payment or provision of any other financial benefit, in respect of any expenses incurred by a member in carrying out duties as a member, or towards their election expenses. This includes any payment or financial benefit from a trade union. The interest that must be declared is the receipt of a payment or financial benefit, rather than the membership of a trade union.

- 1.2.4 The Kent Code adopted by Tonbridge and Malling Borough Council and a number of parishes, makes further provision in relation to trade unions, in that members holding a position of general control or management in a political party or trade union may potentially have an 'Other Significant Interest' in any business of the Authority affecting that political party or trade union. Ordinary members will not therefore be subject to these provisions.
- 1.2.5 Appendix B of the NALC code includes similar provisions relating to parish members, although this code goes slightly further in extending the interest to ordinary members of political parties/ trade unions as well as those in positions of general control or management.
- 1.2.6 The guidance issued by the Secretary of State does not have any statutory force, as the Localism Act does not empower him to issue statutory guidance. Nevertheless, the guidance has now raised as an issue the question of whether members should now declare membership of a trade union in order to comply with the general principle of integrity. For those authorities who have adopted the Kent Code, the simplest solution may be to amend the definition of 'Associated Person' so as include membership of a trade union as well as positions of general control or management. That would be a decision for each authority.

Interests of spouse/ partner

- 1.2.7 The guidance clarifies the position relating to the spouses/ partners of members, in that it makes it clear there is no requirement for members to identify separately their interests when completing the notification of disclosable pecuniary interests. This is consistent with the practice adopted by Tonbridge and Malling for some time now.

Setting Council tax or precepts

- 1.2.8 The guidance also contains a useful section on the involvement of Councillors in setting council tax or precepts. Under the previous statutory regime there was a specific statutory dispensation for members to participate in such matters, notwithstanding their position as council tax payers, which was not carried forward into the new regime. This led to some uncertainty as to whether a dispensation would be required for all members to participate in budget debates and decisions on council tax.
- 1.2.9 The advice contained within the new guidance is that no dispensation is required – any payment or, or liability to pay, council tax does not give rise to a disclosable pecuniary interest as defined in the new statutory scheme. The rationale for this view is that any decision on council tax does not materially affect members' land-holding interests. The introduction of the 'materially affect' test is not something that is contained within the Localism Act 2011 or any regulations made under it, so it does therefore remain to be seen whether the Courts take a similar approach in deciding whether such an interest arises. Nevertheless, the advice confirms the

position we have taken to date on interests arising in connection with budget debates.

1.3 Legal Implications

- 1.3.1 In accordance with Section 27 of the Localism Act 2011, a relevant authority (which includes Tonbridge and Malling Borough Council and all parish councils within the borough) must promote and maintain high standards of conduct by members and co-opted members. In discharging this duty the authority must adopt a code dealing with the conduct that is expected of members/ co-opted members when they are acting in that capacity.
- 1.3.2 The code adopted by each relevant authority must, when viewed as a whole, be consistent with the following principles – selflessness, integrity, objectivity, accountability, openness, honesty and leadership. The code must also include provision for the registration and disclosure of pecuniary and non-pecuniary interests.
- 1.3.3 The Localism Act does not empower the Secretary of State to issue statutory guidance. The advice contained within Annex 1 does not therefore have the force of law.

1.4 Financial and Value for Money Considerations

- 1.4.1 None arising from this report.

1.5 Risk Assessment

- 1.5.1 None arising from this report.

1.6 Equality Impact Assessment

- 1.6.1 Please see ‘Screening for Equality Impacts’ table below.

1.7 Recommendations

- 1.7.1 Members are asked to note this report.

Screening for equality impacts:		
Question	Answer	Explanation of impacts
a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community?	No	

Screening for equality impacts:		
Question	Answer	Explanation of impacts
b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?	N/A	
c. What steps are you taking to mitigate, reduce, avoid or minimise the impacts identified above?		

Background papers:

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None

Adrian Stanfield

Director of Central Services & Monitoring Officer