

| <b>Committee(s):</b>   | <b>Date:</b>  |  |
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| Standards Committee<br>Policy & Resources Committee<br>Police Committee<br>Court of Common Council   | 21 September 2012<br>4 October 2012<br>Urgency<br>25 October 2012 |  |
| <b>Subject: New Member code of conduct and interest provisions under the Localism Act 2011</b>   |   |  |
| <b>Report of: Town Clerk and Comptroller &amp; City Solicitor</b>  |   |  |
| <p style="text-align: center;"><b>Summary</b></p> <p>A report was presented to the Police Committee, Standards Committee, Policy &amp; Resources Committee and the Court of Common Council in June 2012 concerning the new standards regime under the Localism Act 2011. It was always intended to bring back another report once the regulations defining a disclosable pecuniary interest had been made. Those regulations are attached to this report (Appendix 2), together with new guidance from the Department for Communities and Local Government (Appendix 3). Disclosable pecuniary interests may arise in relation to employment, sponsorship, contracts, land, licences, corporate tenancies and securities, and pertaining to a Member or their partner. Technically, Members are required to notify the monitoring officer of all current disclosable pecuniary interests within 28 days of being elected or co-opted, or re-elected or re-appointed. However, once the new standards arrangements have been approved by the Court of Common Council, the Town Clerk will be writing to all Members asking for information about their current disclosable pecuniary interests. Members need to consider what (if any) other interests should be notified and disclosed, and in what manner – the most likely additional category of interest would be gifts and hospitality. Members also need to adopt a new code of conduct, and it is recommended that this should be in the form suggested by DCLG (Appendix 1).</p> <p><b>Recommendation:</b></p> <p>(i) to note the statutory definition of a disclosable pecuniary interest; and</p> <p>To recommend to the Court of Common Council:</p> <p>(ii) any arrangements that are considered appropriate for the notification and disclosure of interests other than disclosable pecuniary interests; and</p> <p>(iii) that a code of conduct in the form set out at Appendix 1 be adopted as the City's code of conduct with effect from 26 October 2012.</p> |   |  |

## **Main Report**

### **Background**

1. A report was presented to the Police Committee, Standards Committee, Policy & Resources Committee and the Court of Common Council in June 2012 concerning the new standards regime under the Localism Act 2011 (“the Act”).
2. A code of conduct, including appropriate provision in respect of the registration and disclosure of pecuniary interests, and interests other than pecuniary interests, had to be adopted by 1 July 2012, in order to comply with the requirements of the Act.
3. The Department for Communities and Local Government (“DCLG”) did not produce the regulations defining a disclosable pecuniary interest in time for this to be incorporated into the June report. It was therefore not possible for Members to consider what other interests, if any, should additionally be registered and disclosed. The City’s existing code of conduct, with the existing provisions regarding personal and prejudicial interests, was therefore re-adopted as a temporary measure.
4. The necessary regulations have now been made, and Members are asked to finalise a new code of conduct and interest provisions.

### **Code of conduct**

5. The City is under a duty to promote and maintain high standards of conduct by Members, and is required to adopt and publicise a code of conduct dealing with the conduct that is expected of Members when they are acting in that capacity.
6. These requirements apply to the Common Council of the City of London in its capacity as a local authority or police authority. However it is assumed that Members will, as previously, wish to apply the code of conduct to all of the Common Council’s functions.
7. The code of conduct applies to elected Members and co-opted Members (in this report referred to collectively as “Members”). Non-Members of the Court of Common Council with voting rights on City committees are co-opted Members for these purposes.
8. The code of conduct does not have to be in any prescribed form, but must include such provision as the City considers appropriate in respect of the registration and disclosure of pecuniary interests and other interests. When viewed as a whole the code must also be consistent with the seven ‘Nolan’ principles: selflessness; integrity; objectivity; accountability; openness; honesty; and leadership.

9. At present the City is still operating a code of conduct based on the old statutory model code of conduct. In the June report, Members were provided with a copy of an “illustrative text” for a code of conduct produced by DCLG, as well as a “template” code of conduct produced by the Local Government Association (“LGA”). Members were asked to comment on the content of a new code of conduct for the City, based on either the DCLG or LGA draft or on alternative provisions.
10. It is recommended that a code of conduct in the form suggested by DCLG (set out again at Appendix 1) be adopted as the City’s code of conduct with effect from 26 October 2012. A code of conduct in this form is likely to be consistent with other codes of conduct operating nationally, and represents the ‘light touch’ approach favoured by Government. It is of course still open to the City to adopt, as an alternative, the LGA code or one of its own devising. The statutory provisions in relation to disclosable pecuniary interests will be incorporated in to whatever code is adopted. Given that the old code is viewed by the DCLG as forming part of a discredited system – see the letter that accompanied the DCLG code at Appendix 1 – a modified version of the old code is not recommended.
11. A breach of the code of conduct, save the statutory provisions in relation to pecuniary interests is not a criminal offence – as set out in June report, this is a matter to be dealt with by the Standards Committee. The sanctions include formal censure, withdrawal of hospitality, and removal from one or more committees.

### **Disclosable pecuniary interests**

12. The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 (“the Regulations”) came into force on 1 July 2012 and are set out at Appendix 2. Disclosable pecuniary interests may arise in relation to employment, sponsorship, contracts, land, licences, corporate tenancies and securities. For the purposes of the Act, a Member has a disclosable pecuniary interest if they have an interest of a description specified in the Regulations. A Member also has a disclosable pecuniary interest if their spouse or civil partner (or a person with whom they are living as husband and wife, or as if they are a civil partner) has such an interest, provided that the Member is aware of this.
13. Disclosable pecuniary interests must be notified and disclosed in the manner set out below – there is no need for the Court of Common Council to make a resolution in relation to this.
14. Under the Act, Members are required to notify the monitoring officer of all current disclosable pecuniary interests within 28 days of being elected or co-opted, or re-elected or re-appointed. Technically therefore, most Common Councilmen do not have to provide details about their disclosable pecuniary interests until after the elections in March 2013, and for many Aldermen this date would be much later. However, such a situation would not be compliant with the City’s general duty under the Act to promote and maintain high

standards of conduct by Members. Nor would it be compliant with the proposed code of conduct, which requires Members to declare any private interests relating to their public duties and take steps to resolve any conflicts arising in a way that protects the public interest. Therefore, once the new standards arrangements have been approved by the Court of Common Council, the Town Clerk will be writing to all Members asking for information about their current disclosable pecuniary interests (and any other relevant interests – see below).

15. The monitoring officer must maintain a register of Members' interests which is available for inspection and published on the City's website, similar to the current arrangements. There is however no continuing duty to update the register due to a change of circumstances until a relevant item of business arises at a meeting which the Member attends. Failure to register disclosable pecuniary interests is a criminal offence.
16. Where disclosable pecuniary interests have been notified to the monitoring officer, there is no requirement to disclose them at a meeting. Otherwise a Member must disclose any disclosable pecuniary interest, of which he is aware, that relates to any matter to be considered, or being considered, at the meeting. He must also then register that interest within 28 days. The duty to disclose arises on attendance at the meeting, rather than simply before the start of consideration of the matter. A Member with a disclosable pecuniary interest is barred from discussing or voting on the matter. Failure to comply with these provisions is a criminal offence. There is no automatic requirement for a Member with a disclosable pecuniary interest to withdraw from the room.
17. Members found guilty of a criminal offence under the above provisions are liable to a fine not exceeding level 5 on the standard scale (currently £5,000) and may be disqualified as a Member for up to 5 years.
18. Special provision is again made in respect of sensitive interests and dispensations, and advice in relation to these matters is available from the Town Clerk or the Monitoring Officer.
19. DCLG has produced a new guide for councillors entitled "Openness and transparency on personal interests" which is attached at Appendix 3.

### **Other interests**

20. The Court of Common Council is in addition under a duty to determine what (if any) other interests should be notified and disclosed, and in what manner.
21. Members will note that the descriptions of disclosable pecuniary interest specified in the Regulations are very similar to the classes of interest specified in the City's existing code of conduct.
22. One major difference is that, provided any office is not carried on for profit or gain, then no disclosable pecuniary interest arises. So, for example, if a Member is appointed or nominated to an external body by the City, or

otherwise holds an unremunerated office with an external body exercising functions of a public nature, or directed to charitable purposes, then no disclosable pecuniary interest arises – whereas under the existing code of conduct a personal or prejudicial interest can arise in appropriate circumstances. It is thought that this change will be welcomed by Members, and it is not proposed to make provision for the notification and disclosure of such interests.

23. Another obvious difference in the Regulations is that gifts and hospitality are not classed as disclosable pecuniary interests. Members are asked to give consideration to whether gifts and hospitality should continue to be notified and disclosed and, if so, of what value? Should gifts and hospitality simply be disclosed when a relevant item of business arises at a meeting which the Member attends? Or does there need to be a continuous duty to register new gifts and hospitality within 28 days, as under the current system? How long should such an interest remain on the register? What effect should the existence of such an interest have upon participation – should this vary according to the value of the gift or hospitality?
24. Members are also asked to consider whether it is appropriate for any other interests to be notified and disclosed. However, Members must in any event act in accordance with the Nolan principles and, under the proposed code of conduct, there are general duties that would be triggered by the existence of other interests, even if these are not specifically required to be notified and disclosed. For example, “You must declare any private interests, both pecuniary and non-pecuniary, that relate to your public duties and must take steps to resolve any conflicts arising in a way that protects the public interest...” In addition, “You must act solely in the public interest and should never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, a friend or close associate.”
25. A failure to comply with any provisions relating to interests other than disclosable pecuniary interests is not a criminal offence, but a breach of the code of conduct.

### **Further action**

26. All Members will be offered guidance and training on the new standards regime once the new code of conduct and interest provisions have been approved by the Court of Common Council, and Members are invited to comment on how such guidance and training might best be provided.
27. In respect of the format of the Register of Interest form, the existing version will be revised to reflect the new requirements – disclosable pecuniary interests, and any other interests determined by the Court of Common Council. The new form will be circulated to all Members following the meeting of the Court on 25 October 2012, for completion, and will be accessible online as soon as possible.

## **Conclusion**

28. The Regulations defining a disclosable pecuniary interest have now been made, and the Town Clerk will be writing to all Members in due course in order to update the register of Members' interests. Members need to consider whether it is appropriate for any interests other than disclosable pecuniary interests to be notified and disclosed. Members also need to adopt a new code of conduct, and it is recommended that this should be in the form suggested by DCLG.

**Contact:**

Edward Wood  
Principal Legal Assistant  
020 7332 1834  
edward.wood@cityoflondon.gov.uk

Lorraine Brook  
Committee and Member Services Manager  
020 7332 1409  
lorraine.brook@cityoflondon.gov.uk