

## **Proposed revisions to the Members' Code of Conduct – Background information and comparative data**

### **History**

Under the Local Government Act 1972 members were required to disclose direct and indirect pecuniary interests and refrain from discussion and voting where such interests arose at meetings. There was no requirement to register such interests prior to disclosure at a meeting at which they arose. Failure to comply with these requirements was a criminal offence. No statutory provision was made for the disclosure of non-pecuniary interests or governing other conduct.

In 1975 a voluntary code of conduct was introduced to deal with non-pecuniary interests and other conduct. The Widdicombe Committee recommended that this code be given statutory footing and that members be required, on accepting office, to undertake to be guided by it. Accordingly the Secretary of State was given the power to issue a national local government code of conduct under the Local Government and Housing Act 1989 and the "National Code of Local Government Conduct" was issued in 1990. As now, no statutory enforcement mechanism was provided. The Code did recognise the importance of non-pecuniary interests and made provision for their disclosure at meetings where they arose.

However, these arrangements were strongly criticised by the Nolan Committee on Standards in Public Life (1997) as being "impenetrable". This led to a radical overhaul of the system under the Local Government Act 2000 which came into force in 2002. These arrangements provided for a national "Model Code of Conduct" enforced ultimately by a regulator, the Standards Board for England. A requirement to register specified classes of interests in a public register was also introduced. These arrangements quickly fell into difficulty as the Standards Board became overwhelmed with a plethora of trivial and not so trivial complaints which exposed a number of difficulties with the Model Code.

Despite a further overhaul in 2007 intended to address these problems the Coalition Government deemed the so called "New Ethical Framework" to be unfit for purpose on taking office and it was replaced from 2012 with the new light touch "localist" regime which effectively replicates the Local Government Act 1972 position whilst retaining a register of specified interests.

There is now a requirement for the registration and declaration of pecuniary interests ("disclosable pecuniary interests") and a member is prohibited from participation (subject to any dispensation) where such interests arise, backed by criminal sanctions for non-compliance. There is no national code and it is for authorities to decide on how non-pecuniary interests and other matters are dealt with provided that any such arrangements are consistent with the Nolan Principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

Nevertheless, the DCLG have issued an “Illustrative Code” to encourage authorities to adopt a light touch approach as opposed to a codified and legalistic one (the three previous national codes having fallen into disrepute). The Illustrative Code was amended in 2013 to include a requirement to register the membership of trade unions but not professional or trade associations or similar bodies. The Local Government Association also produced an example code which some authorities have used as a base for their own codes.

### **Minimum Legal Requirements**

- S.27 of the Act requires the Corporation in its capacity as local authority to adopt a code dealing with the conduct expected of members and co-opted members when acting in that capacity.
- S.28 requires the code, when viewed as a whole, to be consistent with the principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership.
- The code must include provisions the authority considers appropriate in respect of the registration and disclosure of pecuniary and non-pecuniary interests.
- Statutory provision is made under S.29-34 and regulations for the registration and declaration of pecuniary interests (known as “disclosable pecuniary interests”) but not non-pecuniary/other interests which are a matter for local choice. S.29-34 do not limit what may be included in a code.
- Only the authority i.e. the Court of Common Council may adopt and amend the code.
- There are other requirements, not relevant for present purposes, in relation to complaints and investigations.
- Therefore provided the code is not inconsistent with the Nolan Principles or the statutory rules on disclosable pecuniary interests it is for the Court to determine.

### **Registration of Interests – Local Government Act 2000 Requirements**

The Model Code of Conduct in force in the Corporation until 23<sup>rd</sup> October 2012 required the following interests to be registered (subject to the rules on sensitive interests). These provisions are no longer in force.

- (i) Any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority
- (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 you are a member or in a position of general control or management;
- (iii) Any employment or business carried on by you;
- (iv) Any person or body who employs or has appointed you;
- (v) Any person or body, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;
- (vi) Any person or body who has a place of business or land in your authority's area in whom you have a beneficial interest in securities that exceeds £25,000 or 1/100th of the total issued share capital (whichever is lower);
- (vii) Any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director or a person or body of the description in paragraph (vi);
- (viii) The interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;
- (ix) Any land in your authority's area in which you have a beneficial interest;
- (x) Any land where the landlord is your authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or a body of the description specified in paragraph (vi) is the tenant;
- (xi) Any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer.

## **Registration of Interests – Localism Act 2011 and Current Corporation Requirements**

### **Mandatory Localism Act Requirements (The Relevant Authorities (Disclosable Pecuniary Interests Regulations 2012))**

These interests are required by law to be registered and declared as appropriate. The illustrative code refers to them rather than reproduces them verbatim.

- (i) Any employment, office, trade, profession or vocation carried on for profit or gain.
- (ii) Any payment or other financial benefit (other than from the Corporation) made or provided in respect of expenses incurred by the member in carrying out their duties or towards their election expenses.
- (iii) Any contract which is made between the relevant person (i.e. the member or their partner) (or the body in which they have a beneficial interest) and the Corporation under which goods or services are to be supplied or works executed which has not been fully discharged.
- (iv) Any beneficial interest in land within the area of the Corporation.
- (v) Any licence to occupy land in the area of the Corporation for a month or longer

- (vi) Any tenancy where to the member's knowledge the landlord is the Corporation and the tenant is a body in which the relevant person has a beneficial interest.
- (vii) 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 Corporation's area; and
  - (b) Either
    - (i) the total nominal value of the securities exceeds £25,000 or 1/100th of the total issued share capital; 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 relevant person has a beneficial interest exceeds 1/100th of the total issued capital of that class.

## **Current Corporation Requirements**

Currently the Corporation's Code merely states that non-pecuniary interests, gifts and hospitality should be registered and where appropriate declared where doing so is consistent with the Nolan Principles. The Standards Committee has however issued guidance encouraging members to register the receipt of gifts and hospitality with a value of £250 or more, or a cumulative value of £500 or more from any one source in a single year.

## **Other Authorities' Approach to Non-Pecuniary Interests, Gifts and Hospitality**

The Comptroller & City Solicitor has carried out some research as to the approach taken by the London Boroughs and a number of other authorities to these matters which is summarised at Appendix 1.

The Codes of thirty-nine authorities were examined. A range of approaches has been taken to the registration of non-pecuniary interests and authorities have based their codes on the DCLG Illustrative Code, the Local Government Association's own example Code and the old Model Code with varying degrees of modification.

## **Registration of Non-Pecuniary Interests**

Thirteen of the thirty-nine authorities require registration of specified non-pecuniary interests, Barnet, Bromley, Enfield, Hackney, Lewisham, Liverpool, Manchester, Redbridge, Tower Hamlets, Wandsworth, Waltham Forest, Westminster and York. The remaining authorities have no specific registration requirements for non-pecuniary interests, although many make express provision for the declaration (as opposed to registration) of relevant non-pecuniary interests which arise at meetings.

The requirements of those requiring registration of specified non-pecuniary interests are set out below.

### **Barnet**

Membership of any trade union

### **Bromley**

Membership of outside bodies where appointed by the authority  
Membership of other public organisations  
Membership of charities  
Membership of campaigning groups, political parties and trade unions

### **Hackney**

Membership of an “external body” (not defined)

### **Liverpool**

Membership of a trade union

### **Enfield, Lewisham, Redbridge, Tower Hamlets, Westminster and York**

Any body in which the member is in a position of control or management and to which they are appointed by the authority;

Any body-

- (i) Exercising functions of a public nature;
- (ii) Directed to charitable purposes; or
- (iii) One of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union)

Of which the member is a member or in a position of general control or management.

### **Manchester**

As above except membership of a body described in (i)-(iii) above need not be registered, only positions of general control or management.

### **Waltham Forest**

Appointments to outside bodies by the authority (excluding joint committees)  
Membership of charities  
Membership of trade unions recognised by the authority  
Membership of lobbying or campaign groups  
Governorships at any educational institution in the borough  
Membership of voluntary organisations operating in the borough

### **Wandsworth**

A member must notify the monitoring officer in writing of any personal interest which might potentially conflict with their public duties.

### **Gifts and Hospitality**

A list of authorities by the level of gifts and hospitality which must be registered appears at Appendix 2.

- 14/39 authorities have a requirement to disclose gifts or hospitality of a value of £25 or more:- Barnet, Bromley, Enfield, GLA, Hackney, Lewisham, Liverpool, London Fire and Emergency Planning Authority, Newham, Redbridge, Tower Hamlets, Wandsworth, Waltham Forest and Westminster.

- 1/39 authorities has a requirement to disclose gifts and hospitality of a value of £35 or more:- Sutton.
- 6/39 authorities have a requirement to disclose gifts or hospitality of a value of £50 or more:- Barking and Dagenham, Croydon, Hammersmith & Fulham, Kensington and Chelsea, Leeds and York.
- 6/39 authorities have a requirement to disclose gifts or hospitality of a value of £100 or more:- Bexley, Ealing, Greenwich, Harrow, Kingston and Manchester).
- 12/39 authorities make no specific requirement or provision for the registration of gifts and hospitality:- Brent, Bristol, Camden, Haringey, Havering, Hillingdon, Hounslow, Islington, Lambeth, Merton, Richmond upon Thames and Southwark.

**Michael Cogher**  
**Comptroller and City Solicitor**

**Comparative data**

<b>London Boroughs</b>	<b>Register of specified non- pecuniary interests Y/N</b>	<b>Register gifts and hospitality &amp; level</b>
Barking and Dagenham	N	£50.00
Barnet	Y	£25.00
Bexley	N	£100.00
Brent	N	N
Bromley	Y	£25.00
Camden	N	N
Croydon	N	£50.00
<b>London Boroughs</b>	<b>Specified register for non- pecuniary interests Y/N</b>	<b>Register gifts and hospitality &amp; level</b>
Ealing	N	£100.00
Enfield	Y	£25.00
Greenwich	N	£100.00

Hackney	Y	£25.00
Hammersmith and Fulham	N	£50.00
Haringey	N	N
Harrow	N	£100.00
<b>London Boroughs</b>	<b>Specified register for non- pecuniary interests Y/N</b>	<b>Register gifts and hospitality &amp; level</b>
Havering	N	N
Hillingdon	N	N
Hounslow	N	N
Islington	N	N
Kensington and Chelsea	N	£50.00
Kingston	N	£100.00
Lambeth	N	N
Lewisham	Y	£25.00
Merton	N	N



London Boroughs	Specified register for non- pecuniary interests Y/N	Register gifts and hospitality & level
Newham	N	£25.00
Redbridge	Y	£25.00
Richmond Upon Thames	N	N
Southwark	N	N
Sutton	N	£35.00
Tower Hamlets	Y	£25.00
Waltham Forest	Y	£25.00
Wandsworth	Y	£25.00
Westminster	Y	£25.00

Other & Out of London Authorities	Specified register for non- pecuniary interests Y/N	Register gifts and hospitality & level
Bristol	N	N
Leeds	N	£50.00
Liverpool	Y	£25.00
London Fire and Emergency Planning Authority	N	£25.00
Manchester	Y	£100.00
The Greater London Authority	N	£25.00
York	Y	£50.00

**APPENDIX 2****GIFTS & HOSPITALITY REGISTRATION BY VALUE**

<b>£25</b>	<b>£35</b>	<b>£50</b>	<b>£100</b>	<b>No Requirement</b>
Barnet	Sutton	Barking & Dagenham	Bexley	Brent
Bromley		Croydon	Ealing	Bristol
Enfield		Hammersmith & Fulham	Greenwich	Camden
GLA		Kensington & Chelsea	Harrow	Haringey
Hackney		Leeds	Kingston	Havering
Lewisham		York	Manchester	Hillingdon
LFEPA				Hounslow
Liverpool				Islington
Newham				Lambeth
Redbridge				Merton
Tower Hamlets				Richmond
Westminster				Southwark
Waltham Forest				
Wandsworth				
<b>14</b>	<b>1</b>	<b>6</b>	<b>6</b>	<b>12</b>