

# ***Report to the Council***

**Report of:** Standards Committee

**Date:** 6 November 2012

**Chairman:** Councillor Mrs P Smith

---

## **1. CODE OF MEMBER CONDUCT AND PARTICIPATION BY MEMBERS**

### **Recommending:**

**That in relation to members having a disclosable pecuniary interest in a matter and wishing to make representations before leaving a meeting where the public have the right to speak:**

- (a) no action be taken on adopting an appropriate standing order; and**
  - (b) members be required to seek a dispensation under Section 33 of the Localism Act 2011.**
- 

### **Introduction**

1. The Localism Act 2011 removed the national Code of Conduct for Councillors and required councils to adopt their own Codes covering:
  - (a) the seven principles of conduct in public life set out in the Act;
  - (b) registration and declaration of disclosable pecuniary interests and other interests;
  - (c) complaints procedures; and
  - (d) other aspects determined locally.
2. The Council at its meetings on 27 March and 18 June 2012 adopted a model Code of Conduct developed by the Public Law Partnership, the legal services partnership of authorities in Essex, Hertfordshire and Suffolk who work together to share knowledge and resources, so as to ensure that there is a uniform Code across the region. The model Code was adopted subject to review after a period of 12 months.
3. At its meeting on 18 June 2012 the Council noted that the model Code did not include the provisions in the previous national Code for members having an interest to make representations before leaving a meeting where the public have the right to speak. The Council requested us to consider recommending a standing order to provide for the circumstances under which a member could make representations of this kind.

### **Statutory Provision and Legal Advice**

4. In considering the Council's request we have had regard to Section 31 of the Localism Act 2011. This section makes it clear that if a member is present at a meeting of the Council, its Executive or any committee of the Executive, or of any committee, sub-committee, joint committee or joint sub-committee of the authority, and has a disclosable pecuniary interest relating to business which is to be

considered at the meeting, he/she must not:

- (a) participate in any discussion of the business at the meeting, or
- (b) participate in any vote on the matter at the meeting.

5. Our attention has also been drawn to the Explanatory Memorandum to The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 prepared by the Department for Communities and Local Government. In explaining Section 31 of the Act the Memorandum states that the section bars a member from participating in any discussion in, or vote on, the matter in relation to which the member has a disclosable interest.
6. The Department has also published a Guide for Councillors on the new Standards arrangements in which it states the prohibitions imposed by Section 31 apply to any form of participation, including speaking as a member of the public.
7. We have also received advice from the Council's Solicitor and Monitoring Officer that it would be inappropriate to have a standing order which is contrary to statute and in the event of a challenge the law would prevail.

### **Conclusion on the Council's Request**

8. In the light of the Section 31 of the Localism Act 2011, the advice of the Department for Communities and Local Government and the Council's Solicitor and Monitoring Officer we are of the opinion that it would be unwise to adopt a standing order as suggested.

### **Dispensation from Section 31 Requirements**

9. Section 33 of the Localism Act 2011 allows for the granting of dispensations relieving members from the restrictions of Section 31 if it is considered that:
  - (a) without the dispensation the number of persons prohibited from participating would be so great a proportion of the body transacting the business as to impede the transaction of the business;
  - (b) without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business;
  - (c) granting the dispensation is in the interests of persons living in the authority's area;
  - (d) without the dispensation each member of the authority's Executive would be prohibited from participating in any particular business to be transacted by the Executive; or
  - (e) it is otherwise appropriate to grant a dispensation.
10. We are of the opinion that the issue of a member having a disclosable pecuniary interest in a matter and wishing to make representations before leaving a meeting where the public have the right to speak should be addressed by way of seeking a dispensation under Section 33 of the Act.
11. The Council has already agreed that requests for dispensation under 9 (b), (c) and (e) in paragraph 9 above will be determined by the Standards Committee and those under paragraphs (a) and (d) by the Monitoring Officer.
12. In discussing this matter we have concluded that the issue would be likely to arise

mainly at meetings considering planning applications. In recommending the use of dispensations we have expressed some concern about the timescale for determining requests, particularly those requiring a decision of the Standards Committee bearing in mind that members will only become aware of a planning application going to committee approximately 10 days before a meeting. Accordingly, if the Council adopts our recommendations we have asked the Monitoring Officer to submit a report to our next meeting suggesting a process for dealing with requests for dispensation bearing in mind the likely timescales involved.

13. We recommend as set out at the commencement of this report.