

EPPING FOREST DISTRICT STANDARDS COMMITTEE

ADVICE NOTE – DECLARATIONS OF INTEREST FOR MEMBERS SERVING ON OUTSIDE ORGANISATIONS AND OTHER PUBLIC AUTHORITIES (REVISION ~~JULY 2005~~ 2007)

1. PURPOSE OF ADVICE

1.1 To clarify the position regarding Councillors who serve on outside organisations as follows:

(a) declaration of interests where members have been appointed by the Council to outside organisations including situations where membership involves executive or managerial responsibility for that organisation;

(b) the position of Councillors who serve on such organisations but are not appointed by the Council;

(c) the position of Councillors who serve on other public authorities (i.e. established by statute law) whether appointed by the Council or not; and

(d) the position concerning membership of lobby or campaign groups.

2. STATUS OF ADVICE

2.1 **It is for members of the Council individually to determine whether they have a personal interest and whether the interest is prejudicial. Any complaint to the Standards Board for England regarding failure to declare interests, would take into account the advice set out in this note.**

3. CODE OF CONDUCT

3.1 The Code of Conduct for the Council (paragraph ~~10(2)-13~~)(Page ~~Q6-~~ * of the Constitution Binder) ~~sets out the circumstances where a personal interest may not be regarded as a prejudicial interest. These include:~~ requires that personal interests must be registered at any meeting where:

(a) ~~where~~ a member holds a position of general control or management in another public authority; or is a member of or in a position of control or management of any other body where nominated or appointed by the Authority;

(b) ~~where~~ the member has been appointed or nominated by the Authority as its representative on an outside organisation; is a member or in position of control or management in any other body exercising functions of a public nature.

3.2 ~~Recent advice received from the Standards Board for England indicates that these exemptions, which remove the need to declare a prejudicial interest, may not always apply. In either of cases under (a) or (b) above, the Code of Conduct does not require the member to declare that interest if-unless he or she wishes to speak or if the personal interest is also a prejudicial one.~~

4. EXPLANATION OF OTHER PUBLIC BODIES

4.1 Bodies to Which Councillors are Appointed or Nominated by the Council

There are bodies where Councillors are appointed by specific resolution of the Council (usually at the Annual Council meeting). "Appointed" means the Council has an automatic right to send ~~in~~ representatives whereas "nominated" refers to organisations which retain the power to accept or reject a Council representative.

4.2 Any Other Bodies Exercising Functions of a Public Nature

Tests as to whether an organisation meets this definition are:

(a) does the body carry out a public service?

(b) is the body carrying out a public function on behalf of a Public Authority (including "outsourced" activities);

(c) is the body exercising its functions under legislation or ~~some other~~ statutory power;

(d) can the body be judicially reviewed?

If the answer is No to all these questions, it is unlikely that the body is one which exercises functions of a public nature.

Examples of bodies which can meet this definition are:

- Regional and Local Development Agencies
- Other Government Agencies
- Other Councils
- Public Health Bodies
- Council-owned companies (exercising public functions)
- "Arms Length" management organisation for housing on behalf of the Council
- School Governing Bodies

~~4.5. ADVICE FROM STANDARDS BOARD FOR ENGLAND – BACKGROUND~~

~~4.4.1 The Monitoring Officer asked the Standards Board for advice on members appointed by the Council to outside organisations (e.g. Citizens' Advice Bureaux or similar charitable trusts) where they become trustees (or equivalent). The Board was asked whether such a member would have a prejudicial interest in relation to issues coming before the Council, notwithstanding that it was the Council which appointed them. The particular case cited was grant aid applications. Specific issues have also arisen in relation to Trusts and Similar bodies, Campaign and Lobby Groups~~

4.2 The Standards Board stated that the position was not entirely clear. The Board said that where a member is appointed to an outside organisation by the Council, paragraph 10(2) of the Code is relevant. However the Board also suggested that paragraph 10(2) should not be regarded as an exemption in every case. A grant aid application (where the organisation is effectively competing for funds) is the kind of situation where it may not be appropriate to rely on paragraph 10(2). The Board stated that this would be the case whether a member becomes a trustee or does not hold such a position.

4.3 The Board advised that if a Councillor is a trustee of an organisation and has not been appointed by the Council then the exemption in paragraph 10(2) does not apply. The normal test for a prejudicial interest in paragraph 10(1) would therefore be relevant, namely that a member must determine whether the interest is one

~~“which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the member’s judgement of the public interest”.~~

~~4.4—In September 2004, the Standards Board for England issued new advice in respect of “dual-hatted” Councillors and this note has been revised to take account of that advice. Further advice was also given on campaign and lobby groups.~~

~~5.— EPPING FOREST STANDARDS COMMITTEE – VIEWS~~

~~5.1—The comments of the Standards Board for England must, in the Standards Committee’s view, be taken into account in any advice. The Board’s comments have cast doubt over whether paragraph 10(2) can be used to avoid the declaration of a prejudicial interest where outside organisations are concerned.~~

~~5. TRUSTS AND SIMILAR BODIES~~

~~5.25.1—The Committee has been told that there are cases where a Council representative is obliged to become a trustee, a board member or some other “official” position, as a result of having been appointed by the Council as its representative. The Committee feels that the advice must reflect those cases as well as Councillors who do not hold such positions. Furthermore, the Committee feels that advice is required for those who represent the Council and those who occupy such positions independently.~~

~~Campaign and Lobby Groups~~

~~5.32—The Standards Committee also took account of the Standards Board for England’s advice regarding lobbying groups as set out in its September 2004 advice. This advice stated:~~

~~(a) membership of the lobby or campaign group must be registered with the Monitoring Officer;~~

~~(b) consequent to (a), a personal interest must be declared;~~

~~(c) a prejudicial interest will be created where a matter under discussion will have a direct bearing on the lobby or campaign group (viz finance, estates, licensing, planning consent, and the rights and obligations of the group).~~

~~Public Authorities~~

~~5.43—The Committee also looked at references in the Code of Conduct to “public authorities”. In the Committee’s view, “public authorities” are bodies which are established under statutory powers and is giving separate advice to members who serve on such authorities. The Committee also took note of new advice regarding Councillors who serve on more than one public authority.~~

~~5.54—The Committee does not regard Citizens’ Advice Bureaux (or similar organisations) as public authorities.~~

~~6. SUMMARY OF ADVICE~~

~~6.1 Referring to the [fourthree](#) situations on which we were asked to advise as set out in Paragraph 1.21 of this note, the Committee advises that:~~

(a) Where members are appointed to an outside organisation by the Council including those appointments which involve, individually or collectively, responsibility for its activities, they need only must declare a personal interest in all matters relating to that body if they intend to speak. Where issues regarding funding or grant aid are discussed by the Council a prejudicial interest should apply;

(b) Where Councillors are involved in campaign or lobby groups it is likely that they will have a personal interest and, if the matter before the Council bears directly on the campaign group, a prejudicial one.

(c) Where a member of the Council is a member of an outside organisation (including positions of control and management) but has not been appointed by the District Council, under paragraph 10 of the Code of Conduct, a personal interest should be declared in all matters relating to that organisation if they intend to speak and the member concerned should take part in consideration unless there is a prejudicial interest which requires the member to leave the meeting; and

(d) Where a member serves on another public authority (including positions of general control or management) the Committee considers that a member must give ~~declare a personal interest in any matter relating to that authority and give~~ very careful consideration as to whether a prejudicial interest exists on any financial and estates issues which arise. This advice should apply irrespective of whether the Council has appointed the member or the appointment has been made separately.

... 6.2 A matrix summarising this advice is provided in the Appendix to this note.

7. HOW THE ADVICE SHOULD BE APPLIED

7.1 Councillors need to be aware that this advice applies not only to meetings of the Council and its Cabinet/Committees etc., but also to more informal settings where they are acting in an official capacity, particularly where issues about lobbying arise.

7.2 Separate advice for “dual hatted” members involved in planning as set out in the District Council’s planning protocol.