

WINSCALES PARISH COUNCIL
ADOPTION OF REVISED CODE OF CONDUCT
REPORT BY CLERK

PURPOSE OF REPORT

- 1 This report seeks approval to a revised code of conduct following implementation of the relevant provisions of the Localism Act 2011.

RECOMMENDATIONS

- 2 It is recommended that the Council :
- (1) adopt the revised Code of Conduct for members and co-opted members of the Council as attached at Appendix 1 to this report with effect from 27 July 2012;
 - (2) note the disclosable pecuniary interests as detailed in the appendix to the revised Code of Conduct which will be required to be disclosed in the Council's register;
 - (3) agree the other interests that should be treated as registrable interests as provided for in the revised Code of Conduct and note the requirements for completion;
 - (4) note that the District Council's Monitoring Officer will prepare and maintain a new Register of Members interests to take effect from 1 July 2012 to comply with the requirements of the Act and of the Council's Code of Conduct, once adopted, and ensure that it is available for inspection as required by the Act;
 - (5) note that the register of interests must also be published on this council's website and that this will be actioned by the clerk working with the district council's monitoring officer;
 - (6) agree that members should be required to leave the room where they have a disclosable pecuniary interest, and that this requirement should take effect from the date of adoption of the revised Code and be included in the Council's Standing Orders;
 - (7) note that the District Council's Monitoring Officer will arrange training for parish/town council clerks initially on the new arrangements.

BACKGROUND

- 3 The Localism Act 2011 ("the Act") made provision for the abolition of the Standards Board for England, and included a requirement for relevant authorities, including town and parish councils (local councils), to adopt a revised Code of Conduct. The Act places a duty on local councils to promote and

maintain high standards of conduct by members and co-opted members of the Council. In discharging this duty local councils must adopt a code dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity. The Council must secure that its code includes provision for the registration and disclosure of pecuniary interests and other interests.

- 4 A failure to comply with the code of conduct is not to be dealt with otherwise than in accordance with arrangements made under which allegations can be investigated, and under which decisions on allegations can be made. It is the District Council's responsibility to investigate complaints about an alleged failure by a parish councillor to comply with the Code's provisions.
- 5 The Localism Act 2011 (Commencement No. 6 and Transitional, Savings and Transitory Provisions) Order 2012 was made on 6 June 2012 and brings relevant provisions relating to a revised Code of Conduct into force on 1 July 2012. This report recommends the adoption of a revised code of conduct and arrangements for the registration of interests.
- 6 Regulations have also been published by the Secretary of State which set out specified pecuniary interests.
- 7 The notification of member's interests requires them to be recorded in the Council's register which is maintained by the District Council's Monitoring Officer. The register itself must be published on the District Council's website and on a parish council's website if there is one.
- 8 In the light of representations that it would be beneficial to have a standardised code as far as possible, district monitoring officers and CALC have discussed a draft Code with a view to gaining support for a Cumbrian wide code of conduct. Appendix 1 to this report is a draft Code which monitoring officers and CALC recommend be adopted by principal authorities and local councils.

Code of Conduct

- 9 The draft Code at Appendix 1 complies with the requirements of the Act, and with the intentions of Central Government, and is being recommended to the principal authorities within Cumbria, and is expected to be adopted by all of them.
- 10 A parish council may adopt the Code of Conduct which has been approved by its district council or it may adopt its own Code. It makes sense in our circumstances for the council to adopt the district's code so that all councillors work operate under a common and consistent code. This has advantages for the public and councillors and it should keep down administration costs for districts. There will be guidance to sit alongside the code which is being worked up by the Cumbria Monitoring Officers group and appropriate training will be provided around the new regime for clerks initially to cascade to councillors.

Disclosable Pecuniary Interests (DPIs) and Other Registrable Interests

- 11 The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 specify what is a pecuniary interest for the purposes of section 30 of the Act. The legislation sets out what pecuniary interests must be disclosed. A pecuniary interest is a disclosable pecuniary interest in relation to a person ("M") if it is of a description specified in regulations made by the Secretary of State and either –

- (a) it is an interest of M's or
 - (b) it is an interest of –
 - (i) M's spouse or civil partner,
 - (ii) a person with whom M is living as husband and wife, or
 - (iii) a person with whom M is living as if they were civil partners,and M is aware that that other person has the interest.
- 12 The interests which may require to be disclosed relate to such matters as employment, sponsorship, contracts, land, licenses, corporate tenancies and securities.
- 13 Whilst members must comply with the requirements around DPIs, any other registrable interests are for determination by the council. The draft Code sets out both the disclosable pecuniary interests specified in the regulations as well as other registrable interests. The interests set out in the draft Code in the latter category formed part of the original code, and it is recommended that these should also form part of the register. It is also suggested, in line with the recommendation to principal authorities, that the limit with regard to the declaration and registration of gifts and hospitality should be raised from £25 to £50.

Declaration of Interests

- 14 Section 31 of the Act relates to pecuniary interests in matters which are considered at meetings of the Council. If a member is present at a meeting of the Council and is aware that he/she has a disclosable pecuniary interest in any matter to be considered, or which is being considered at the meeting, he or she must do the following :
- (a) If the interest is not entered on the Council's register he or she must disclose that interest at the meeting;
 - (b) If the interest is not entered on the Council's register and is not the subject of a pending notification, the member concerned must notify the District Council's Monitoring Officer of the interest before the end of 28 days beginning with the date of the disclosure;
 - (c) Not participate or participate further in any discussion of the matter at the meeting; and
 - (d) Not participate in any vote or further vote taken on the matter at the meeting.
- 15 In the legislation the phrase "pending notification" is used in relation to an interest. The pending notification is where the interest itself is notified to the Council's Monitoring Officer but has not been entered in the register as a consequence of that notification.

Sensitive Interests

- 16 A sensitive interest may be omitted from any published version of the register. A sensitive interest is one which a member has but is of a nature whereby the member and the District Council's Monitoring Officer consider that its disclosure could lead to the member or a person who is connected with him or her being subject to violence or intimidation.

Leaving the Meeting Room

- 17 Whilst the new Code does not make provision with regard to members leaving the room during the discussion or vote on matters where they do have DPIs, legislation provides that standing orders may allow for such exclusion and members are asked to agree that standing orders be amended to include an additional provision as follows:-

Interests

Disclosable Pecuniary Interests

- (1) Subject to (2) below if a member has a disclosable pecuniary interest in any matter to be considered, or being considered, at the meeting then the member should declare that interest to the meeting and should leave the room whilst any discussion or vote takes place.
- (2) If a dispensation has been granted to a member in relation to a disclosable pecuniary interest then subject to the terms of the dispensation the member may be relieved from the above restrictions but will still be required to declare the interest to the meeting.
- 18 This would mean that as under current arrangements members will leave the room during an item in which they have a DPI.
- 19 It would seem appropriate in the interests of transparency for a member to make the nature of a disclosable interest known when such a matter arises at a meeting. The current process is known and understood by members and requires a declaration of interest to be made at the outset of the meeting or as soon as practically possible. It is considered that this should continue and that members should identify the nature of the interest which they have in any matter so that is known and understood by all and is a matter of public record. If a declaration is not made, other than through the register, it would not necessarily be apparent to anyone who is present at the meeting why a particular member is not participating or voting in any matter.

Arrangements for Standards

- 20 The District Council must make arrangements for allegations under the Code to be investigated, and arrangements under which decisions on allegations can be made. These must include provision for the appointment of at least one independent person.
- 21 An important point to make is that a District Council no longer has the power to suspend members, and that where an investigation results in a finding that there has been a failure by a parish councillor to uphold the Code this will lead to a recommendation to the local council. This could include a request to make an apology, to undertake training or to refrain from use of certain council premises.

Dispensations

- 22 It is possible for the council to grant a dispensation from the restrictions which apply to a member's participation in or voting in the discussion on any matter where he or she has a DPI. CALC will be issuing further guidance on how councils may wish to exercise this power.

Transitional Provisions

- 23 The transitional provisions put in place measures to ensure that any complaints about a member's conduct not resolved by 1 July 2012 are taken forward to conclusion. If any matters are not resolved by 1 July then the complaint will be resolved under the new arrangements.

ALTERNATIVE OPTIONS

- 24 The options are as set out in the report. The Council is required to consider its revised standards arrangements in accordance with the legislation.
- 25 It is an offence for a person, without reasonable excuse:
- (a) to fail to comply with an obligation relating to the notification of a disclosable pecuniary interest within 28 days
 - (b) fail to disclose the interest to a meeting where that interest is not entered on the register; or
 - (c) fail to disclose the interest to the District Council's Monitoring Officer within 28 days of the date of the disclosure or where a councillor has a disclosable pecuniary interest in any function which he is discharging. In addition, it is an offence to participate in any discussion or vote on any matter in which a member has a disclosable pecuniary interest. A person commits an offence if the information which is provided under the disclosure provisions is false or mis-leading or he or she is reckless as to whether the information is true or mis-leading.
- 26 A prosecution of an offence can only be instituted by or on behalf of the Director of Public Prosecutions. The proceedings must be brought within a period of 12 months beginning with the date upon which there is sufficient evidence in the opinion of the prosecutor to warrant proceedings. In any case any proceedings must be brought within three years.

RISK ASSESSMENT

Risk	Consequence	Controls required
That the Council fails to comply with the requirements of the Localism Act 2011	Challenge to the Council's governance arrangements	Ensure appropriate arrangements are in place to ensure compliance with the legislation.
That members fail to make appropriate declarations	Members at risk of criminal proceedings in respect of any breach	Ensure members are aware of the provisions of the regulations which apply to them so that they make appropriate declarations and act appropriately in relation to any interests which they have.

EQUALITY AND DIVERSITY

27 There are no equality issues to raise in this report.

APPENDICES ATTACHED TO THIS REPORT

Angela Meek
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