

## LOCALISM ACT: CONFLICT OF INTERESTS

The Local Authorities (Executive Arrangements) (Meetings & Access to Information) (England) Regulations 2012 requires any Member of an Executive (Cabinet) to declare any conflict of interest when taking a decision, either collectively (at Cabinet) or individually under existing procedures, and any dispensation by the Council.

While Cabinet Members have always been required to declare any personal or conflict of interests when making decisions it appears the greater emphasis being given to this term in the Regulations is as a consequence of the Government's dictats on the revised Standards Arrangements introduced earlier this year. While, under the new Standards arrangements, Members were required to declare a 'Disclosable Pecuniary Interest' there was no continuing requirement on Members to declare personal interests as was the case previously ... which are, to all intents and purposes, no more and no less than conflicts of interest!

The County Council's decision when adopting its Code of Conduct to retain the need for Members to declare personal interests seems, in retrospect, even more sensible! In essence the position is no different from that which existed both before and after the Council adopted its latest Code and - in relation to this new requirement - the declaration by Members of personal interests as set out below will hopefully achieve the desired objective and avoid the introduction of another layer of bureaucracy.

Thankfully, however, should there nonetheless be a circumstance in which a Cabinet Member has a conflict of interest that is not capable of being declared as a personal interest then the Regulations also allow dispensations to be granted to that Cabinet Member to allow them to continue to speak and/or determine and the power to grant such dispensation has been delegated to me as the Council's Monitoring Officer, I hope the following aide memoire will be helpful.

- 1. If any member of the Cabinet has, in his/her opinion (and in addition to any personal interest they are required to declare under the Members' Code of Conduct [see below], any other conflict of interest relating to a matter** to be decided by the Cabinet or in their capacity as a Cabinet member in accordance with para 11.1 of the Council's Scheme of Delegation then they shall must disclose it and may remain and speak and vote on and determine the matter provided the disability to discuss and determine that matter has been removed by the Monitoring Officer exercising powers delegated to them by the Head of the Paid Service in accordance with Regulations 12 and 13 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

2. Members are expected to put service to the public and their constituents ahead of their own personal interests or self-interest and should, wherever possible, avoid taking decisions in circumstances that could reasonably be perceived as contradicting that basic tenet of public service ethos. The pitfalls of 'conflict of interest' is acknowledged in the Members' Code of Conduct adopted by the Council which recognises the potential conflict between Public Duty and Private Interests and the need to embrace and observe the Principles of Public Life and, inter alia, Members acting solely in the public interest and not placing themselves under an obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties. It is nonetheless acknowledged that members and their constituents should have a communion of interests inasmuch as elected members may share and understand the problems of their electors – but it is also necessary to distinguish between a Members' own special interests and the general interests of all constituents. Failure to do so could not only call into question the integrity of the member and his/her observance of the Members' Code of Conduct but could create the perception of impropriety and possibly leave the Council open to challenge and, ultimately, result in a decision taken being invalidated.
3. While there is no clear definition as to what is meant by a conflict of interest, the following advice may be of assistance to Members.
4. A Member of the Cabinet may be regarded as having or being perceived to have a conflict of interest that would be incompatible with their general duty to take decisions in accordance with the general principles of decision-making set out in the County Council's Constitution (Article 13) and in the public interest where, for example;
  - they may have two or more differing interests held by or entrusted to them in a particular matter and or which are incompatible with each other or are incompatible with the general principles of the Members' Code of Conduct and the Principles of Public Life;
  - they may profit personally from decisions made in their official capacity';
  - they may owe separate duties to act in the best interests of two or more constituents in relation to the same or related matters and those duties conflict or there is a significant risk that those duties may conflict;
  - their duty to act in the best interest of any constituent in relation to a matter conflicts or there is a significant risk that it may conflict with their own interest in relation to that or a related matter.
5. Notwithstanding the above, the need to declare any 'conflict of interest' can necessarily only apply where any such conflict has not already

been declared as is required to be declared as a personal interest in accordance with the Members' Code of Conduct.

6. **Where a member of the Cabinet is of the opinion that they may have a conflict of interest over and above any personal interest they are already required to declare under the Members' Code of Conduct, then they are advised to consult the Monitoring Officer with a view to determining whether or not a Dispensation is required and may be granted to enable them to continue to speak and vote at the meeting or determine the matter.**
7. However, where a member of the Cabinet has a conflict of interest which is significant or does not meet the criteria above, such that a Dispensation cannot be granted, then they shall withdraw from the meeting or refer the decision to the Leader or Deputy Leader of the Council in accordance with paragraph 11.3 of Part 3 of the Council's Constitution (Scheme of Delegation).

*\* A personal interested is defined in the County Council's Members Code of Conduct as:*

- 7.2. *Those other personal interests laid down by the County Council, namely your membership of any body to which you have been appointed by the County Council or exercising functions of a public nature directed to charitable purposes or whose principal purposes include influence of public opinion or policy, your membership of any other local Authority and of any political party or trade union.*
- 7.3. *In addition to those interests listed at 7.1 and 7.2 above [of the Code] which you are required to registered, you may wish also to declare membership of any body which, in your view, might create a conflict of interest in carrying out your duties as a County Councillor, such as membership of the Freemasons or any similar body.*

## DEVON PENSION BOARD - CONFLICTS OF INTERESTS

*[NB: This Guidance Note does not form part of the Constitution or the Members' Code of Conduct but is reproduced here for convenient reference].*

- 1.1. If any member of the Board has a Disclosable Pecuniary or Personal Interest in any matter before the Board within the meaning of Standing Order 34 and the Devon County Council Member's Code of Conduct then they must declare it in the prescribed manner.
- 1.2. In establishing a Pension Board, the Administering Authority (the County Council) must satisfy itself that Local Pension Board members do not have overriding conflicts of interest on appointment or whilst they are members of the Board.
- 1.3. Notwithstanding 1.2 above, it is important to note that the issue of conflicts of interest must be considered in light of the Local Pension Board's role, which is to assist the Administering Authority. The Local Pension Board does not make decisions in relation to the administration and management of the Fund: these rest with the Administering Authority. As a result, it is not anticipated that significant conflicts will arise in the same way as would be the case if the Board were making decisions on a regular basis. Nonetheless, if any member of the Board has, in his/her opinion (and in addition to any personal interest they are required to declare under the Members' Code of Conduct), any other conflict of interest relating to a matter to be decided by the Board or in their capacity as a Board member then they must disclose it and may remain and speak and vote on and determine the matter.
- 1.4. Section 5(5) of the Public Service Pensions Act 2013 Act defines a conflict of interests as '*a financial or other interest which is likely to prejudice the person's exercise of functions as a member of the board (but does not include a financial or other interest arising merely by virtue of membership of the scheme or any connected scheme)*'.
- 1.5. A Pension Board Member may also be regarded as having or being perceived to have a conflict of interest that would be incompatible with their general duty to take decisions in accordance with the general principles of decision-making set out in the County Council's Constitution (Article 13) and in the interests of Fund Members where, for example.
  - 1.5.1. a finance officer appointed as a member of a Local Pension Board may, from time to time, be required to take or scrutinise a decision which may be, or appear to be, in opposition to another interest or responsibility. For example, they may be required as a member of the Local Pension Board to take or scrutinise a decision which

involves the use of departmental resources to improve scheme administration, whilst at the same time being tasked, by virtue of their employment, with reducing departmental spending.

- 1.5.2. a member representative who works in the Administering Authority's internal audit department may be required as part of his work to audit the Fund. For example, the employee may become aware of confidential breaches of law by the Fund which have not yet been brought to the attention of the Local Pension Board.
- 1.5.3. an employer representative from the private sector may also have a conflict of interest as a decision-maker in their own workplace. For example, if an employer representative is drawn from a company to which the Administering Authority has outsourced its pension administration services and the Board are reviewing the standards provided by it.