

COMMITTEE: **COUNCIL** **REF NO: C/12/09**

DATE: **31 OCTOBER 2012**

SUBJECT: **ARRANGEMENTS FOR LOCAL CHOICE
NON-PECUNIARY INTERESTS UNDER THE
LOCALISM ACT 2011**

PORTFOLIO HOLDER: **COUNCILLOR ELLESMERE**

DIRECTOR: **LAURENCE COLLINS**

Short description of report content and the decision requested:

Previously, on 20 June 2012, the Council resolved to adopt the local Suffolk Code of Conduct for members and made arrangements for the monitoring and enforcement of the local code in line with the requirements of the Localism Act 2011.

This report provides details of the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 and presents options in respect of 'local choice' non-pecuniary interests and recommends adopting 3 categories of local non-pecuniary interests.

The report also details the provisions in the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 (SI 2012/2089) for the Head of the Paid Service to give dispensations to Executive members with 'conflicts of interests'.

List of Appendices included in this report:

a) *Appendix 1 – Suffolk Code of Conduct*

This report has been prepared by Claire Barritt Tel: 01473 432320

Email: claire.barritt@ipswich.gov.uk

This report was prepared after consultation with:

Internal consultees

Group Leaders

Chief Executive

External consultees

N/A

The following policies form a context to this report:

(all relevant policies must also be referred to in the body of the report)

Building a Better Ipswich

LIST OF BACKGROUND PAPERS AS REQUIRED BY LAW

(papers relied on to write the report but which are not published and do not contain exempt information)

- 1. Localism Act 2011**
- 2. The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012**
- 3. The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012**

OTHER HELPFUL PAPERS

(papers which the report author considers might be helpful – this might include published material)

None

1. Introduction

- 1.1. On 20 June 2012, the Council agreed to adopt the Suffolk Code of Conduct for elected and co-opted members in line with the requirements of the Localism Act 2011, and made arrangements for the monitoring and enforcement of the code. These arrangements are consistent with the arrangements recently introduced by Suffolk County Council and the 6 other borough/district councils in Suffolk.
- 1.2. The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 were laid before Parliament on 8 June 2012 and the complete Code of Conduct (including the categories of Disclosable Pecuniary Interests referred to the Regulations) is now attached as Appendix 1.
- 1.3. Nationally, a number of local authority lawyers have been critical of the drafting of the regulations relating to interests as they contain a number of ambiguities, particularly around the ‘pecuniary’ issues that can arise out of membership of local authorities in respect of allowances, members who are council house tenants in relation to rent setting, and member who are council tax payers in relation to setting the budget. Previously under the old mandatory Code of Conduct, those particular items of business were exempted from being treated as ‘personal and prejudicial’ interests. At the time of writing this report, the Government has not yet issued any guidance regarding the interpretation of those ‘pecuniary’ interests that members may have by virtue of their local authority office, other than to say that if a member has a disclosable pecuniary interest in a matter the member can seek a dispensation if they wish to participate and/or vote in relation to relevant council business where they have a disclosable pecuniary interest. Dispensations have to be applied for in advance and can be granted by either the Monitoring Officer or the Audit and Governance Committee, depending on the grounds for the dispensation.
- 1.4. A view has been taken by some local authorities that provided that the Council makes membership of a local authority (and other voluntary or charitable bodies) a Local Non-Pecuniary Interest, then even if the financial interest of that authority or charity or voluntary body is affected by the item of business, the member only need declare it and can participate and vote on any item of business that concerns their LNPIs. However, this has not yet been tested by the courts, and such interest would still be subject to the common law rules concerning actual or apparent bias.
- 1.5. There is a further change relating to all Executive decision making contained in the provisions in the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 (SI 2012/2089) if there is a perceived ‘conflict of interest’ on the part of the decision maker(s) in an Executive item of business. For all decisions made at Executive meetings, or by the Leader, or an Executive Member, and any officers who consult any Executive Member, the new regulations provide that the record of the decision must disclose any “conflict of interest” declared by any Executive Member and a “note of any dispensation granted by the relevant authority’s Head of Paid Service”, i.e. the Chief Executive has to be recorded.
- 1.6. As yet, no guidance has been issued to the Head of the Paid Service on how to apply these new provisions. These regulations do not define “conflict of interest” for this purpose – while this would appear to include a disclosable pecuniary interest under the provisions of the Localism Act 2011, it could also include any

other circumstance which might amount to common law bias or apparent bias on the part of the member.

2. Background

- 2.1 The Appendix to the Suffolk Code gives the Description of Categories of Disclosable Pecuniary Interests as specified within the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012. It is a requirement of the Localism Act 2011 that Councillors and co-opted members record and declare their interests and those of any “relevant person”. The relevant person is either:
- a) the spouse or civil partner of the Councillor or co-opted member;
 - b) a person with whom the Councillor or co-opted member is living as husband or wife or as civil partners.
- 2.2 The Government has subsequently issued guidance to the effect that members need not disclose spouses/partners interests as a separate category provided that such interests are included as their own interests on the form.
- 2.3 By the time of this meeting, all Councillors will have completed the new registration forms in respect of any Disclosable Pecuniary Interests that they may have. An ‘awareness session’ in respect of the consequential requirements that flow from having such interests will take place before the start of the meeting on 31 October 2010 and the Monitoring Officer and Deputy Monitoring Officer are available during normal business hours to assist with any questions members may have about the new arrangements in relation to their interests and the impact on any council business.
- 2.4 The main consequence for a member that has a Disclosable Pecuniary Interest (DPI) is that they cannot participate or vote on any item of business that concerns that interest, unless a dispensation has been obtained. To participate and vote on business in which the member has a DPI without a dispensation is now a criminal offence under the Localism Act.
- 2.5 In the case of non-pecuniary interests, the Localism Act provides that each council may adopt whatever categories of Local Non-Pecuniary Interests (LNPIs), they feel are necessary in their area. If the Council chooses to adopt LNPIs, then the effect on Councillors is that they must register them, but can still participate and vote on business that concerns those interests – provided that such interest is not subject to the law relating to bias, for example, where the interest has so great an effect on the item of business that it would be contrary to the Nolan principles, and therefore not appropriate for the member to participate in a particular item business relating to any particular LNPI.
- 2.6 If a Councillor with a LNPI forgets or fails to disclose their LNPI at a meeting where an item of business concerning such an interest is being considered, this would amount to a breach of the local code (and also potentially challengeable under the rules relating to actual or apparent bias), but it would not be a criminal offence.

- 2.7 Guidance is available from the Monitoring Officer and Deputy Monitoring Officer if any member is concerned about any of their interests and the impact they may have on the conduct of council business.
- 2.8 This report recommends that Council adopts the following categories of Local Non-Pecuniary Interests, which are based on the remaining categories of 'personal' interests that previously required registration under the old mandatory national code:
- 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 the Council;
 - Any body-
 - exercising functions of a public nature;
 - directed to charitable purposes; or
 - 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 **and** in a position of general control or management;
 - Any person from whom you have received a gift or hospitality with an estimated value of at least £25.

3. Relevant Policies

- 3.1 The Disclosable Pecuniary Interest categories are laid down by regulation. The recommendations in respect of the 'local choice' for non-pecuniary interests are based on the categories that were included in previous national mandatory code, and which have been adopted by the other 7 Suffolk Authorities.

4. Options Considered / Under Consideration

- 4.1 The options under consideration are a) whether to adopt the local choice non-pecuniary interest categories in line with the rest of Suffolk or b) to have ones particular to Ipswich, or c) not to have any.

5. Consultations

- 5.1 Consultation has taken place with the other Suffolk Monitoring Officers and the Leaders of the Suffolk local authorities and there is a consensus that adopting the Local Non-Pecuniary Interest categories adds to consistency in terms of how the local code will operate, especially for 'twin hatted' members who serve on more than one authority. There is also a view that requiring councillors to declare non-pecuniary interests adds to the transparency of decision making.

6. Risk Management

Risk Description	Consequence of risk	Risk Controls	Probability of risk occurring taking account of controls (scale A-F) A – very likely F – almost impossible	Impact of risk, if it occurred taking account of actions (scale 1 – catastrophic ; 4 – negligible)	Actions to mitigate risk
That the council does not put in place any categories for LNPIs	That decision making is not as transparent as it could be; Possible confusion for twin hatted councillors	Consult on the need for local choice categories	D	4	Make recommendations to council

7. Environmental Impact Assessment

7.1 There is no environmental impact arising out of this report.

8. Equalities and Diversity Implications

- 8.1 Under the general equality duty as set out in the Equality Act 2010, public authorities are required to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation as well as advancing equality of opportunity and fostering good relations between people who share a protected characteristic and those who do not.
- 8.2 The protected grounds covered by the equality duty are: age, disability, sex, gender reassignment, pregnancy and maternity, race, religion or belief, and sexual orientation. The equality duty also covers marriage and civil partnership, but only in respect of eliminating unlawful discrimination.
- 8.3 The law requires that this duty to have due regard be demonstrated in decision making processes. Assessing the potential impact on equality of proposed changes to policies, procedures and practices is one of the key ways in which public authorities can demonstrate that they have had due regard to the aims of the equality duty."
- 8.4 The requirement to register interests and to make declarations at meetings applies to all Councillors and co-opted members in the same way irrespective of any particular special responsibilities they may hold,. As such no adverse impact has been detected in respect of any groups with protected characteristics.

9. Financial Considerations

- 9.1 There are no direct financial implications arising out of this report.

10. Legal Considerations

- 10.1 Councillors are obliged by the provisions of the Localism Act 2011 to comply with the regulations relating to Disclosable Pecuniary interests. The Act provides for local discretion with regard to non-pecuniary interests.
- 10.2 The perceived ambiguity in the current regulations may be clarified by Government guidance or by the courts at some point.

11. Performance Monitoring

- 11.1 The Monitoring Officer will arrange for members to register their local non-pecuniary interests with a target date for registration of 28 days from the date of the decision to adopt any categories in respect of non-pecuniary interests.

12. Conclusions

- 12.1 The main advantage of the Council adopting Local Non Pecuniary Interest categories is that it aids openness and transparency of decision making but does not preclude a Councillor from participating in council business where that business may affect any disclosed LNPI.

13. Recommendations

- 13.1 **That the Council adopts the following categories of ‘local choice’ Non-Pecuniary Interests (LNPIs) in respect of the Suffolk Code of Conduct:**
- 1. 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 the Council;**
 - 2. 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 and in a position of general control or management;**
 - 3. Any person from whom you have received a gift or hospitality with an estimated value of at least £25.**
- 13.2 **That the Head of Legal and Democratic Services be authorised to make consequential changes to the Council’s Constitution.**

IPSWICH BOROUGH COUNCIL

Suffolk Local Code of Conduct for Members

In accordance with S 26 to 37 of the Localism Act 2011 on 20th June 2012 Ipswich Borough Council (the Council) resolved to adopt the Suffolk Local Code of Conduct for the purposes of discharging its duty to promote and maintain high standards of conduct within its area.

Until otherwise amended or replaced by a decision of the Council, the Suffolk Local Code of Conduct set out below shall hereafter apply to all elected members and any co-opted members entitled to vote on any decisions of the council or its committees, sub committees or joint committees when acting in their capacity as a member of the Council.

Preamble

The Suffolk Local Code of Conduct shall be interpreted in accordance with the following 7 principles of public life identified by the Committee on Standards in Public Life chaired by Lord Nolan:

Selflessness - Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

Integrity - Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

Objectivity - In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability - Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness - Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty - Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership - Holders of public office should promote and support these principles by leadership and example.

**SUFFOLK LOCAL CODE OF CONDUCT APPLICABLE TO ELECTED MEMBERS
AND CO-OPTES APPOINTED TO THE COUNTY, BOROUGH, DISTRICT AND
PARISH COUNCILS IN SUFFOLK**

1. You must treat others with respect.
2. You must not —
 - (1) do anything which may cause your council to breach any of the Council's duties under the Equality Act 2010
 - (2) bully any person;
 - (3) intimidate or attempt to intimidate any person who is or is likely to be —
 - (a) a complainant,
 - (b) a witness, or
 - (c) involved in the administration of any investigation or proceedings, in relation to an allegation that a member (including yourself) has failed to comply with his or her council's Code of Conduct; or
 - (4) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your council.
3. You must not —
 - (1) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where—
 - (a) you have the consent of a person authorised to give it;
 - (b) you are required by law to do so;
 - (c) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
 - (d) the disclosure is reasonable, in the public interest, made in good faith and in compliance with the reasonable requirements of the council; or
 - (2) prevent another person from gaining access to information to which that person is entitled by law
4. You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or council into disrepute.
5. You —
 - (1) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and
 - (2) must, when using or authorising the use by others of the resources of your council —
 - (a) act in accordance with your council's reasonable requirements;
 - (b) ensure that such resources are not used improperly for political purposes (including party political purposes); and
 - (3) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

6. (1) When reaching decisions on any matter you must have regard to any relevant advice provided to you by—

- (a) your council's chief finance officer; or
 - (b) your council's monitoring officer;
 - (c) your council's head of paid service; or
 - (d) any other officer,
- where that officer is acting pursuant to his or her statutory duties.

6. (2) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your council.

7. Registration of Interests

7.1. You must register within 28 days of becoming a member of the Council (and to notify the Council's Monitoring Officer of any changes within 28 days) any Disclosable Pecuniary Interests (DPIs) you may have for publication in the Register of Members' Interests. (See Appendix A to this Code.)

7.2. You may not at any time discharge any function or participate in any Council business or discussions, or vote on any issues that relate to or concern any of your DPIs where you are aware that you have a relevant DPI. You may not remain in the chamber or meeting room or in the public gallery when any matter that relates to any of your DPI is under discussion or debate unless you have requested and obtained a written dispensation from your Council's Monitoring Officer in advance of the relevant meeting.

7.3. You must register within 28 days of becoming a member of the Council (and notify your Council's Monitoring Officer of any changes within 28 days) any non statutory Local Non Pecuniary Interests (LNPIs) set out in Appendix A to this Code but you may participate in any discussions or debates relating to or concerning any of your LNPIs after the date of registration.

7.4. You must declare any DPIs or LNPIs to a meeting where business is relevant to those interests, including those interests that are already registered with the Monitoring Officer or where registration is pending.

7.5. You must register, within 28 days, any gifts and hospitality received by you in accordance with the instructions issued within your Council by the Monitoring Officer.

7.6. The Council's Register of Interests will be available for inspection at the Council offices during normal office hours, and will be published on the Council's website.

8. Sensitive Interests

You may also apply to your Council's Monitoring officer for non publication of the full details of any of your DPIs or LNPIs where you reasonably believe that publication of the details of a particular DPI or LNPI could result in your being subjected to violence or intimidation. In considering such applications the Monitoring Officer shall have regard to any representations made by you in determining whether he or she considers the relevant DPI or LNPI should be

treated as a Sensitive Interest and excluded from the published version of the Register of Members' Interests.

Appendix A to the Suffolk Code of Conduct

Part 1

Description of categories of Disclosable Pecuniary Interests

You have a Disclosable Pecuniary Interest in any business of the Council if it is of a description set out in 1 - 7 below and is either:

- (a) An interest of yours
- (b) An interest of your spouse or civil partner
- (c) An interest of a person with whom you are living as husband and wife or as civil partners

and, in the case of paragraphs (b) and (c), you are aware that they have the interest.

In these descriptions the term “relevant Person” is used to mean you as member and any such person as set out in paragraphs (b) and (c)

- 1 Any employment, office, trade, profession or vocation carried on for profit or gain.
- 2 Any payment or provision of any other financial benefit (other than from the Council) made or provided within the relevant period in respect of any expenses incurred in carrying out your duties as a member, or towards your election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992 other than from a registered political party.
- 3 Any beneficial interest in securities of a body where -
 - (1) that body (to your knowledge) has a place of business or land in the area of the Council; and
 - (2) either:
 - (a) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or
 - (b) 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 persons has beneficial interest exceeds one hundredth of the total issued share capital of that class.
- 4 Any contract which is made between the relevant person, or a body in which they have a beneficial interest, and the Council -
 - (1) under which goods or services are to be provided or works are to be executed; and
 - (2) which has not been fully discharged.
- 5 Any beneficial interest in any land in the Council's area.
- 6 Any tenancy where to your knowledge (a) the landlord is the Council and (b) the tenant is a body in which a relevant person has a beneficial interest.
- 7 Any licence (alone or jointly with others) to occupy land in the Council's area for a month or longer.

Part 2

Description of categories of Local Non Pecuniary Interests

- 1 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 the Council;
- 2 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 **and** in a position of general control or management;
- 3 Any person from whom you have received a gift or hospitality with an estimated value of at least £25.