

Division(s):

## **AUDIT & GOVERNANCE COMMITTEE - 15 JANUARY 2014**

### **MEMBER CODE OF CONDUCT – REVIEW OF THE OXFORDSHIRE CODE**

#### **Report by the County Solicitor and Monitoring Officer**

1. The Department of Communities and Local Government has issued new non-statutory guidance on members' "personal interests". This purports to give clarity about what members and co-opted members need to register and declare in addition to their Disclosable Pecuniary Interests.
2. The guidance did however raise the question as to whether, and to what extent, the Oxfordshire Code should be amended. Consequently, the Monitoring Officers of Oxfordshire's district, city and county councils ("the Monitoring Officers' Group") met to review the guidance and the Oxfordshire Code. This report presents the Group's recommendations.
3. In short, the Group is of the view that the issues raised by the new guidance are already well-covered in the Oxfordshire Code and recommends that no changes are made to it at this time.

#### **Background**

4. The Principal Councils in Oxfordshire (i.e. Oxfordshire County Council, Cherwell District Council, Oxford City Council, West Oxfordshire District Council, South Oxfordshire District Council and Vale of White Horse District Council) adopted a common Code of Conduct for Members to take effect on the 1st July 2012. That was a 'local' Code, drafted by the Monitoring Officers from each of the Principal Councils and adopted in response to the changes to the ethical standards regime within local authorities made by the Localism Act 2011. That Code ('the Oxfordshire Code') has also been adopted the district, city and county councils and also by the vast majority of Parish Councils within Oxfordshire. The Oxfordshire Code is included as Annex 1.
5. Prior to the Localism Act 2011, the Local Government Act 2000 had established a duty on local authorities to promote and maintain high standards of conduct by elected Members. The framework provided by the 2000 Act in pursuit of that overarching duty included a national statutory Code, local Standards Committees (chaired by and including voting independent Members), the Standards Board for England and a national Tribunal. The framework also provided a range of potential sanctions including, crucially, suspension by Standards Committees and disqualification by the national Tribunal.

6. The Localism Act 2011 retained the overarching duty on local Authorities to promote and maintain high standards of conduct but repealed the entirety of the framework except for the duty to adopt a Code of Conduct (but with discretion as to its content unlike the previous mandatory Code). That Act also introduced new criminal offences in respect of the non-registration or declaration of pecuniary interests.
7. The adoption of the Oxfordshire Code was undoubtedly a sensible course of action. It was desirable for its own sake but has considerable practical benefits for dual and triple hatted Members. It is also less likely to cause public confusion as to the standards of conduct expected of different elected representatives within a common administrative area.

### **The review of the Code**

8. The Monitoring Officers from each Authority have carried out a joint review of the Oxfordshire Code in the light of the new guidance. All aspects of the Code have been considered but the review has particularly focussed on the issue of non-pecuniary interests, or as the Localism Act describes them, 'interests other than pecuniary interests'.
9. In the absence of a national mandatory Code, a number of advisory drafts have been published by bodies including the Local Government Association and the Department for Communities and Local Government. The various drafts differ greatly. The Oxfordshire Code has, in the view of the Monitoring Officer Group, steered a sensible middle path between the competing draft Codes which are either inadequate (as a reaction against the repealed national Code) or 'gold plated' (an attempt to retain the repealed national Code).
10. The requirement in the Localism Act is that the adopted Code must be consistent with the principles of public life; that is selflessness, integrity, objectivity, accountability, openness, honesty and leadership. In addition each Council must "secure that its code of conduct includes the provision the authority considers appropriate in respect of the registration in its register, and disclosure, of (a) pecuniary interests, and (b) interests other than pecuniary interests." It is clear from this section that each Authority has discretion as to whether it considers it appropriate to require the disclosure and registration of non-pecuniary interests within its Code. This report considers that issue and seeks to inform the exercise of that discretion by each Authority.
11. The register of interests is maintained and published by the Monitoring Officer for each Authority (and, for district councils, for the Parish Councils within the administrative boundaries of that Authority). The Act provides a definition of pecuniary interests by reference to the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 ('the Regulations') and as noted above also creates criminal offences in respect of their non-disclosure or registration.
12. The Regulations specify seven classes of pecuniary interests, namely:
  - employment/office/trade/profession/vocation
  - sponsorship

- contracts
  - land
  - licences
  - corporate tenancies and
  - securities.
13. The clear distinction between pecuniary and non-pecuniary interests was not a feature of the previous national Code. That Code drew, instead, a distinction between personal and prejudicial interests.
14. It is important to note what the consequences are/were for each type of interest. Under the former Code the existence of a personal interest merely required the declaration of it. Once declared, the Member was entitled to participate in any debate and vote. A prejudicial interest (which was a personal interest that could reasonably be regarded as so significant as to affect the Member's assessment of the public interest) required the Member to withdraw from the meeting and thereby not participate in any debate or vote. Under the Oxfordshire Code (consistent with requirements of the Localism Act) the existence of a disclosable pecuniary interest similarly requires withdrawal and non-participation.

### **The issue of non-pecuniary interests**

15. The Localism Act represented a fundamental shift for the ethical standards regime in relation to Member interests. Parliament decided to create a class of interests (pecuniary) which were to be enforced by way of criminal prosecutions. The local complaint handling arrangements adopted by principal Councils for allegations of breaches of the Code only provide for the sanction of 'naming and shaming'.
16. Against that backdrop the Monitoring Officer Group has concluded that their collective advice in relation to the Oxfordshire Code is that it should not be revised so as to require Members to disclose non-pecuniary interests. To introduce such a requirement (and therefore to invite complaints of non-declaration of interests within a statutory complaint handling process that does not have robust sanctions) is, in the view of the Monitoring Officer Group, not a sensible use of public resources. The absence of such a requirement also means that the non-declaration of a personal interest would not create a free standing ground for judicial review against the Authorities (beyond the existing common law ground of actual or apparent bias).
17. In relation to that final point it is important that the Code neither strays into issues of bias nor into the jurisdictional boundaries of judicial review - a Code of Conduct is not a sufficiently flexible, comprehensive or appropriate mechanism for acting as a check and balance on the discharge of functions by local authorities (which was one of the problems with the use and abuse of the previous Code).

## **Practical implications and gifts and hospitality**

18. It is important to note that the absence of a requirement within the Oxfordshire Code to declare non-pecuniary interests does not mean that Members are precluded from registering and declaring such interests. The experience of the Monitoring Officer Group within their respective Authorities is that Members are keen to declare such interests or associations as they think might be relevant. This Council's register of interests form already contains a dedicated space for allow members to declare whichever non-pecuniary interests or associations they wish. This will therefore continue to provide a means by which non-pecuniary interests may be declared publicly.
19. The former Code included as a type of personal interest the receipt of gifts or hospitality of at least the value of £25. The Monitoring Officer Group has considered whether a requirement to register and declare gifts and hospitality should be introduced into the Oxfordshire Code. The Group considers that such a requirement should not be introduced as it would elevate one type of interest under the former Code over all others. In addition, there is a category of disclosable pecuniary interest which is designed to capture the carrying on of an office or vocation for profit or gain.
20. As noted in Paragraph 10 above, the Oxfordshire Code is required to be consistent with certain principles. Although not described as such by the Localism Act the principles are commonly known as the 'Nolan Principles'. Attached as Annex 2 is the latest expression of those principles. The shaded text is the wording from the Oxfordshire Code describing each of the principles for comparison. Although the text is not identical the drafting of the Oxfordshire Code compares favourably and the view of the Monitoring Officer Group is that the Oxfordshire Code remains consistent with the Nolan Principles.
21. In September 2013 the Government published a revised guide for Councillors entitled 'Openness and Transparency on Personal Interests'. This is included as Annex 3. The guidance suggested that mere membership of a Trade Union would always need to be registered. This is not currently a specific requirement of the Oxfordshire Code. However, the view of the Monitoring Officer Group is that no amendment is required as the Regulations already deal satisfactorily with the point. The Regulations explicitly provide that sponsorship includes "any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992". This means that sponsorship by a trade union will be a disclosable pecuniary interest. Mere membership of a trade union is not a pecuniary interest as it is the sponsorship, not the membership, which is the interest.

## **Conclusion**

22. The Monitoring Officer Group believes that no changes are required to the Oxfordshire Code as currently adopted by the County Council. The Group will, of course, keep the Oxfordshire Code under periodic review and I will report any further issues to this Committee.

## **RECOMMENDATION**

- 23. In the light of the Monitoring Officer Group's review, the Committee is RECOMMENDED to make no changes to the current Oxfordshire Members' Code of Conduct at this time.**

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Background papers: none.

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