

APPENDIX IV



The Commission for
Local Administration in England

Members' interests

Guidance on good practice **4**

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Members' interests

(Advice on complying with the National Code of Local Government Conduct)

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The Commission is committed to providing equal opportunities in employment and in the services it provides. The Commission seeks to ensure that no complainant, job applicant or Commission employee is treated any differently from another because of their: colour; race; nationality; ethnic, regional or national origin; age; marital status; disability; political or religious belief; sex; trade union activity; sexuality or class.

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Introduction

- 1 The Commission is often asked to give advice on the operation of the National Code of Local Government Conduct. The Commission thought, therefore, that it would be helpful to provide a comprehensive guidance note. This is intended for councillors, monitoring officers and other senior officers of councils to whom councillors may look for advice. Where appropriate, references to councillors should be taken as including references to members of bodies other than councils to which the National Code of Local Government Conduct also applies.
- 2 The circular introducing the National Code reminded councils that Local Government Ombudsmen may find that a breach of the National Code by an individual member of the council constitutes maladministration by the council.
- 3 Councillors will have read the National Code of Conduct and will have signed a declaration to be guided by it. They have a personal obligation to honour that declaration and should at all times bear in mind the advice in the Code that it is not enough to avoid impropriety: councillors should also avoid any occasion for suspicion and any appearance of improper conduct. The Local Government Ombudsmen have often criticised councils because, although justice may have been done, it has not been seen to be done.
- 4 In producing this guidance the Commission has been helped by observations made by the Department of the Environment, the local authority associations and a wide range of professional bodies. One of the comments received in response to the consultation was that the Commission's guidance should concentrate on forecasting what the Local Government Ombudsmen are likely to see as maladministration. Accordingly this guidance note seeks to achieve that aim by giving examples and explaining the reasoning behind the Ombudsmen's views.
- 5 The Ombudsmen recognise that different people might hold different views. However, the task of investigating complaints and concluding whether there has been maladministration rests with the Local Government Ombudsmen. They hope that this guidance note will help to prevent maladministration; and will promote understanding and awareness of their views, the judgements they make and the reasons for these judgements.

Public identification of councillors

- 6 Local Government Ombudsmen are now required to identify in their reports a councillor who has committed a breach of the Code unless the Ombudsman considers that such identification would be unjust. Whilst the Ombudsmen have regard to the particular factors involved in each investigation, it is only in exceptional circumstances that they do not name a councillor who has transgressed the Code. Councillors should note therefore that if they fail to abide by the Code they will usually find themselves subject to what is likely to be extensive coverage in the local press.

Pecuniary interests

- 7 The National Code of Local Government Conduct incorporates reference to the law's requirements about pecuniary interests. The failure to declare a pecuniary interest and where necessary to abstain from taking part in the council's consideration of a matter in which a councillor has such an interest is likely to constitute maladministration as well as being a criminal offence. Local Government Ombudsmen will consider whether to defer their investigation of such allegations until the outcome of any criminal investigation is known.
- 8 The first question to ask is whether the councillor or a spouse with whom he or she is living has a pecuniary interest in the matter under consideration. An interest will not cease to be pecuniary because the council's decision is not to the financial advantage of the councillor. 'Pecuniary' can mean loss as well as gain. If the council's decision can have any financial effect at all upon the councillor then the interest should be declared, unless it arises simply in the councillor's capacity as a ratepayer or council tax payer or as a general consumer of the council's services.
- 9 Although the law requires a pecuniary interest to be declared only if the interest is that of a councillor or spouse with whom the councillor is living, the Commission advises that an interest under the Code of Conduct should also be declared if it is that of a partner with whom the councillor is living even though they may not be married. Councillors should also have regard to the interests of other members of their immediate family with whom they have a close or established relationship; and should in the Ombudsmen's view, declare such interests.
- 10 A pecuniary interest may be so remote or insignificant that it cannot reasonably be regarded as likely to influence the councillor when considering or voting on any question. Such an interest need not be declared as a pecuniary interest. Whether the councillor thinks that he or she will not be influenced by the interest is not the key test so much as whether members of the public knowing the facts of the situation would reasonably think that the interest might influence the councillor.

Non-pecuniary interests

- 11 If there is no pecuniary interest there may still be a non-pecuniary interest to be declared. Again the test is not whether **the councillor** thinks there is an interest to declare but whether other people knowing the facts of the situation might reasonably think so. It may be advisable, therefore, for the councillor to seek advice from the appropriate senior officer of the council on how the position is likely to be seen by someone other than the councillor.
- 12 Unless a non-pecuniary interest is insignificant it will need to be declared. Some significant interests may, however, be regarded as not being clear and substantial: in those circumstances a councillor may be able to participate, having declared the interest. (See paragraphs 23–29.)

Insignificant interests

- 13 As with pecuniary interests, the interest need not be declared if it is insignificant. 'Insignificant' is not defined in the National Code but the test used in the Local Government Act's provisions on pecuniary interests may be appropriate – is the interest such as could reasonably be regarded as influencing the councillor in any consideration or voting on the matter? If the answer is yes then the interest is **not** insignificant. A councillor ought to be sure of the insignificance of the issue if he or she is not going to declare it. If in doubt it is wise to err on the side of caution and declare the interest.
- 14 Interests which arise from business transactions have sometimes been regarded by the Local Government Ombudsmen as declarable and at other times as insignificant. In deciding on which side of the line the case falls the Ombudsmen have had regard to the frequency and scale of the transactions. They have also considered whether there has been additional social contact. A Local Government Ombudsman was not critical of councillors who were farmers who took part in consideration of a planning application to build a warehouse for agrochemicals in a rural area.
- 15 Councillors who have an interest which is not insignificant may sometimes wish to take part in the council's consideration in a way which is detrimental to their own interest – for example they may wish to speak in favour of a planning application which will have an adverse effect on the value of their own house. However, such circumstances do not make it legitimate for the councillor to participate. Nor will Local Government Ombudsmen usually refrain from criticism if councillors recognise an interest (for example a close friendship) but decide that they will not let this influence them.
- 16 The Local Government Ombudsmen's consideration of whether or not an interest is insignificant has often been in the context of complaints that councillors have taken part in the consideration of planning applications despite having an interest arising from membership of an organisation or association which is common to both the councillor and the applicant for planning permission.
- 17 The Local Government Ombudsmen's approach in such circumstances has been to seek to establish the extent to which the councillor is a friend of the applicant. Mere membership of the same organisation will not automatically result in a conclusion that such friendship exists: the Local Government Ombudsmen will examine the size and nature of the organisation and the part played by the councillor and applicant.
- 18 Some rebuttable presumptions may arise. Thus a councillor would be assumed to have a significant interest in applications from members of the same masonic lodge. In the absence of other evidence, however, the councillor who is a freemason would not be assumed to have such an interest in a matter concerning a member of some other masonic lodge. A Local

Government Ombudsman did not criticise a member of a British Legion club who participated in the consideration of a planning application made by another British Legion club 25 miles away. Where members of the applicant club participated the Ombudsman was critical. A Local Government Ombudsman also criticised a councillor who was an honorary member of a community centre who participated in the grant of planning permission to that centre.

- 19 The presumptions are rebuttable either way. The organisation may be so large that social contact between members is unlikely. Common membership in those situations may be insignificant. On the other hand members of different lodges or clubs may sit on some inter-lodge or inter-club committees and thus might need to declare an interest arising out of that relationship.
- 20 Much may depend on the size of the organisation concerned. Common membership of a golf club with very many members may be insignificant although an interest would always need to be declared where the matter under discussion concerned the golf club itself. Common membership of a small village chapel may require a declaration where a planning application is made by another member whereas membership of a much larger congregation need not unless the matter concerned that chapel specifically or was, for example, a planning application submitted by the minister. Membership of a large national charity will not usually require declaration of an interest in a matter affecting another supporter of the charity; but common membership of the local committee of a charity might well require such a declaration.
- 21 Mere acquaintance will not in the Local Government Ombudsmen's view require a declaration of interest. The Ombudsman will need to judge on the facts whether the degree of contact could give rise to the impression that a councillor might be swayed in his or her approach to the matter. The test will always be not whether the councillor has actually been influenced by the interest, but whether members of the public might reasonably consider that the councillor might be, or have been, so influenced.
- 22 Local Government Ombudsmen have considered that interests should have been declared by a councillor who attended a party given by an applicant for planning permission, and by a councillor who had proposed a toast at a wedding where the father of the bride was an applicant for planning permission. A councillor who was the nephew of an applicant's step-father was judged to have too remote an interest to require declaration. Another councillor was criticised for failing to declare an interest arising from his brother's ownership of land next to a property whose demolition was being considered by the council.

Whether significant interests are clear and substantial

- 23 If the councillor decides there is an interest to declare then the question arises as to whether the interest is clear and substantial. If it is not, then, having declared the interest, the councillor will nevertheless be able to participate and vote on the matter. The test as to whether an interest is clear and substantial is whether a member of the public, knowing the facts of a situation, would reasonably think that the councillor *might* be influenced by the interest.
- 24 The Local Government Ombudsmen are likely to regard a councillor as having a clear and substantial interest in what happens to a next door neighbour's property (and this might indeed amount to a pecuniary interest). They would also regard as substantial an interest in parking restrictions in the street serving the business premises of the councillor. A councillor over whose land a footpath was obstructed was criticised for taking part in the consideration of the council's policy on how to deal with obstructions.
- 25 Councillors will always have a clear and substantial interest (and almost certainly, a pecuniary interest) in their own planning applications and those on which they provide professional advice to clients. Councillors in this position need to take great care that they do not bring improper pressure to bear on officers. The council must be seen to be dealing with such applications no more favourably than if the application had been submitted by someone who was not a councillor. To avoid giving that impression the councillor may at times be less favourably treated than would a member of the public making a similar application. Councillors should recognise this as a possible consequence of taking part in public life. An Ombudsman has expressed the view that lobbying which may be acceptable from most applicants can never be proper if the applicant is a councillor; and has also criticised a councillor for using his position to gain access to officers to pursue his private interest. The Ombudsman suggested that the councillor should have confined his enquiries to correspondence or should have appointed an agent.
- 26 Councillors should refrain from participating in the consideration of matters concerning their employers. A Local Government Ombudsman criticised a councillor for participating in consideration of a planning application from a developer with whom the councillor was about to commence employment.
- 27 Councillors who have a clear and substantial interest should refrain from taking part in their political group's consideration of the matter. Nor should a councillor seek to lobby fellow members about a matter in which he or she has an interest. The councillor should seek completely to avoid discussing the matter with fellow members. A Local Government Ombudsman strongly criticised a councillor who declared an interest and took no part in the public consideration of his son's planning application, but who lobbied extensively behind the scenes. Other councillors need to

guard against treating their colleagues more favourably than they would other members of the public.

28 Common membership of a political party does not of itself in the Local Government Ombudsmen's view constitute a clear and substantial interest in a matter directly affecting another member of the party. As with membership of other associations, the Ombudsman will seek to establish whether the degree of contact and common membership is such as to amount to a declarable interest. A councillor who is a member of a political party may well have a pecuniary interest in the premises belonging to the branch of which he or she is a member. An Ombudsman was not critical of councillors who considered a planning application from a political club; the councillors concerned, although belonging to the same political party, were not actually members of the club. Councillors in another authority who were members of a social club were criticised for taking part in the consideration of a planning application by the club.

29 Councillors may well be predisposed by their political beliefs to supporting or opposing particular causes. That is not likely to give rise to criticism from the Local Government Ombudsmen. For example, no criticism was made of councillors who were trade unionists for taking part in the consideration of a proposed policy requiring potential contractors to allow their employees to join a trade union.

Participation despite having an interest

30 Even if the interest is clear and substantial, the councillor may still be able to speak and in some cases to vote on the matter. The National Code of Conduct refers to four such circumstances which are:

- Membership of a public body
- Membership as a representative of the council on the governing body of a charity, voluntary body or organisation for a public purpose
- Membership of the governing body of a charity, voluntary body or organisation for a public purpose other than as a representative of the council
- Being a member or supporter of a charity, voluntary body or organisation for a public purpose but not a member of the governing body.

31 The Local Government Ombudsmen believe that councillors should still consider whether in the light of the facts of any such case and in their own particular circumstances it is appropriate to participate.

32 There may be, for example, circumstances where it would be inappropriate for the councillor concerned to take part in voting on the matter. If a council is considering a controversial planning

application from a public body of which a councillor is the chairman, the Ombudsman may regard it as improper for that councillor to vote on whether permission should be given. The councillor concerned might in the eyes of the public be seen as too closely committed to the proposal from the public body. Similarly, if it is proposed to enter into some contractual arrangement with a company controlled by the local authority, and particularly if there are competing would-be contractors, it would be inappropriate for a local authority member who is a director of the company controlled by the local authority to take part in the council's consideration, even though the company might be regarded as an organisation for a public purpose. But a Local Government Ombudsman did not criticise members of a district council who were also parish councillors for participating in an application for an entertainments licence for a village hall owned by the parish council.

Dispensations

- 33 Where the interest is clear and substantial and none of the exceptions in the Code applies, there may still be a possibility of the councillor taking part in the council's consideration of the matter.
- 34 If the interest is pecuniary a dispensation can be granted by the Secretary of State (or by the district council in respect of a parish councillor seeking dispensation to participate in a matter under consideration by the parish council). Such dispensation may, for example, be given if the work of the authority would be adversely affected because of the number of councillors declaring an interest on a particular matter. If a dispensation has not been granted then Local Government Ombudsmen will be likely to find that there has been maladministration if a councillor takes any part in the council's consideration of a matter in which he or she has a pecuniary interest. A criminal offence may also be committed. If the Secretary of State does grant dispensation (either to speak and vote or just to speak), the interest will still need to be declared.
- 35 A dispensation cannot be granted to allow a councillor with a pecuniary interest to speak at a committee of the council unless he or she is actually a member of that committee.
- 36 If the interest is non-pecuniary then councillors may in certain cases give themselves a dispensation. There are only two circumstances in which this can be done without offending the National Code of Conduct and even if either of those apply the Code requires the councillor to take advice from the chairman of the authority (if practicable) *and* from the appropriate senior officer.
- 37 The two circumstances under which councillors may give themselves dispensation to participate notwithstanding that they have a clear and substantial interest are where:

a at least half of the council or committee would similarly have to withdraw, or

b a councillor's withdrawal together with that of other councillors would upset the political balance of the council or committee to such an extent that the decision is likely to be affected.

Advice should perhaps be sought from the councillor's group leader or party whip to help establish whether the declaration of interest and withdrawal would upset the political balance of the council. A pairing arrangement may enable the withdrawal to take place without the political balance being affected.

38 A good practice would be for a councillor who considers that either or both of the criteria for self-dispensation are satisfied to explain to the committee before it considers the matter why the councillor thought that self-dispensation was appropriate: the committee could then decide whether to proceed in the knowledge that the councillor was participating.

39 Complaints which the Local Government Ombudsmen have received about declarations of interest have usually been about planning applications. Many councils stress that planning applications are determined without regard to party politics. Where a council takes its planning decisions in this non-political way, it is difficult to see how self-dispensation on ground (b) can be justified: although the political balance would be upset, the decision would not be likely thereby to be affected.

40 Even where one of the two grounds for self-dispensation exists, councillors are not obliged to give themselves such a dispensation. If the public would regard a councillor's interest as so close to the matter under consideration that the councillor could not put the interest out of his or her mind then he or she should *not* take part in the discussion or vote on the matter, no matter how many of the council might be similarly affected or what effect the declaration of interest has on the balance of political parties.

41 Councillors need also to consider any guidance on self-dispensation which the council has itself provided.

Representing interests of constituents

42 Local Government Ombudsmen do not accept an argument which some councillors have put forward that they should participate in matters where they have an interest, in order to represent the interests of their constituents rather than themselves.

43 The Ombudsman's view was upheld by the Divisional Court in *R v Local Commissioner for Administration ex parte Blakey*, 7 March 1994. The court confirmed that the only circumstances in which a councillor could take part in the council's consideration of a matter in which the councillor had a

