

STANDARDS OF CONDUCT: MEMBERS OF COUNCILS IN ENGLAND

Advice Notes

Standards of Conduct: England

The relevant law in England is in the Localism Act 2011, sections 26-37, Sch 4; The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 (SI 2012 No 1464).

See Chapter D for more on Standards of Conduct.

Under Chapter 7 of Part 1 to the Localism Act 2011 there is a standards regime for members of councils in England. Each council must promote and maintain high standards of conduct by members and co-opted members of the authority (s. 27(1)) and in discharging this duty each council must adopt a code dealing with the conduct that is expected of members and co-opted members (s. 27(2)).

A parish or town council may adopt any code provided the code which is adopted complies with the requirements set out in s. 28. Section 28 requires, in particular, that the code is consistent with the Nolan principles. A parish or town council may adopt a code based on a national model, such as the one published by NALC, or the code of the parish or town council's principal authority, or another code of its choosing, provided these requirements are met. It must publicise the adoption, revision or replacement of a code of conduct in such manner as it considers likely to bring the adoption, revision or replacement of the code of conduct to the attention of persons who live in its area (s. 28(12)).

A "co-opted member" is a person who is not a member of the parish council but (i) is a member of any committee or sub-committee of that authority, or (ii) is a member of, and represents the council on, any joint committee or joint sub-committee of the authority; and who is entitled to vote on any question that falls to be decided at a meeting of that committee or sub-committee (s.27(4)).

District or unitary authorities are required to have in place arrangements under which allegations can be investigated and arrangements under which decisions on allegations can be made (s. 28(6)). They have this role in relation to allegations made against their own members and co-opted members and in relation to allegations made against members and co-opted members of parish councils in their area. If a code of conduct complaint is upheld, there are hardly any meaningful sanctions which can be imposed (but see also para B25 below in respect of criminal offences).

Members' interests are defined as "disclosable pecuniary interests" and as "other interests". A council can decide for itself which "other interests" it wishes to include in its code. But disclosable pecuniary interests are set out in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 (S.I. 2012 No. 1464). A member or co-opted member has a disclosable pecuniary interest if (i) it is an interest listed in those Regulations; and (ii) (a) it is an interest of the member or co-opted member; or (b) it is an interest of the member's or co-opted member's spouse, or of a person with whom the member or co-opted member is living as husband or wife or with whom the member or co-opted member is living as if they were civil partners; and the member or co-opted member is aware that the other person has the interest. Guidance on interests is given in the DCLG publication *Openness and Transparency on Personal Interests, A Guide for Councillors* (updated September 2013).

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The monitoring officer of the principal authority is required to establish and maintain a register of interests of members and co-opted members of parish councils in their area. But it is for the parish council to determine what is entered in the register. If a parish council has a website, it must secure that its register is published on its website (s. 29).

Members or co-opted members must notify their monitoring officer of their disclosable pecuniary interests on taking office. They must do so before the end of 28 days beginning with the day on which they become a member or co-opted member (s.30). If they are re-elected or re-appointed, the requirement is to notify only any disclosable pecuniary interests not already registered (s. 30).

Section 31 of the Act sets out what a member or co-opted member must do if he or she is present at a meeting of his or her council or of any committee, sub-committee, joint committee or joint sub-committee and is aware that he or she has a disclosable pecuniary interest in any item to be considered or being considered at the meeting.

- He or she must disclose the interest to the meeting (or, if it is a “sensitive interest” as set out in s. 32, only that he or she has a disclosable pecuniary interest in the matter but not the nature of that interest) if the interest is not entered in the council’s register.
- If the interest is not entered in the council’s register and is not the subject of a pending notification, he or she must notify the council’s monitoring officer of the interest before the end of 28 days beginning with the date of the disclosure.
- Unless he or she has been granted a dispensation under s. 33 of the Act (see paragraph B24 below) -
 - i. he or she may not participate, or participate further, in any discussion of the matter at the meeting.
 - ii. he or she may not participate in any vote, or further vote, taken on the matter at the meeting.

A disclosable pecuniary interest is a “sensitive interest” if the nature of the interest is such that the member or co-opted member, and the council’s monitoring officer, consider that disclosure of the details of the interest could lead to the member or co-opted member, or a person connected with the member or co-opted member, being subject to violence or intimidation. If the interest is entered in the council’s register, copies of the register that are made available for inspection, and any published version of the register, must not include details of the interest (but may state that the member or co-opted member has an interest the details of which are withheld under s. 33(2)).

A member or co-opted member may participate in the discussion of or take part in the vote on a matter at a meeting in which he or she has a disclosable pecuniary interest if that person’s council has granted him or her a dispensation to do so. The member or co-opted member must put his or her request in writing to the proper officer of the council. The council may then grant the dispensation only if, after having had regard to all relevant circumstances, the council –

- considers that without the dispensation the number of persons prohibited by s. 31(4) from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business;

- considers that without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business;
- considers that granting the dispensation is in the interests of persons living in the authority's area; or
- considers that it is otherwise appropriate to grant a dispensation.

If a dispensation is granted, it must specify the period for which it has effect and this period may not exceed four years. (s. 33).

A person commits an offence if, without reasonable excuse, he or she fails to comply with the obligations about the disclosure of disclosable pecuniary interests in s. 30(1), 31(2) or (3) or participates in any discussion or vote in contravention of s. 31(4). He or she also commits an offence if under s. 30(1), 31(2) or (3) the person provides information that is false or misleading and the person knows that the information is false or misleading or is reckless as to whether the information is true and not misleading. Prosecutions may only be brought by or on behalf of the DPP. If convicted, the person is liable to a fine not exceeding level 5 on the standard scale (currently £5,000) and may be disqualified for a period not exceeding five years from being or becoming (by election or otherwise) a member or co-opted member of the authority in question or any other relevant authority.

Part of the clerk's role is to remind councillors of their duties under the council's code of conduct and under the statutory provisions. But councillors are responsible for their own actions and it is a matter for the individual member to decide whether he or she must declare a disclosable pecuniary interest or other interest, and whether or not to seek a dispensation. Members must take advice as they see fit. If they break the law, they risk a criminal prosecution. But, from the Council's point of view – and from the Clerk's point of view - members voting are members voting and if they choose to stay in the room and vote, then their votes must be counted. The Clerk should make sure that the minutes record exactly who was present and who declared a DPI and who had a Dispensation and who voted. But it is probably unhelpful to record in the minutes that "Councillors X and Y refused to declare a DPI".

(See also: Council meetings: Disorder: Disruptive Councillors)