

## **FIRST REVIEW OF THE CODE OF CONDUCT**

### **Summary**

1. This report provides Members with the opportunity to reflect on the introduction of the new Codes and identify any issues which the Committee may be able to address.

### **Background**

2. In July the City Council adopted its Code of Conduct based on the previous national model Code with the addition of provisions reflecting the new requirements with regard to disclosable pecuniary interests. All the Parish Councils adopted a slightly simpler Code, based on a model provided by the National Association of Local Councils, which retained most elements of the previous national Code.
3. A copy of the City Council's Code appears as Appendix A to this report.
4. Two recent internal training sessions for City Councillors have provided an opportunity to consider the new code in some depth. Very few issues have been identified in relation to the local elements of the Code. There is a typographical error in paragraph 2.1 of the Code – which can be corrected without any formal decision to do so. No other changes to the Code have been identified as this stage as being required.
5. In terms of other issues a question has been raised as to the new local requirement to register hospitality which is offered but not accepted. The specific issue relates to conferences. Some Members receive flyers containing invitations to free or discounted conferences on a fairly regular basis and generally do not respond to them. It is questionable whether the Committee would consider

attendance at such events and the provision of reasonable refreshments associated with them to come within the definition of hospitality. The Committee may wish to issue guidance on this matter.

6. The national elements of the Code have been more problematic and, in particular, those relating to the declaration of disclosable pecuniary interests. The Act is very poorly worded. Section 31(1)(b) says that where a Member: “has a disclosable pecuniary interest in any matter to be considered, or being considered, at the meeting” he or she cannot participate. Quite what that means has been the issue of some debate given the way DPI’s are defined in Regulations. The Communities and Local Government Department resorted to paraphrase in Guidance they issued saying that participation is prevented when:

*“...you have a disclosable pecuniary interest relating to any business that is or will be considered at the meeting”*

7. That raises the question of where the lines should be drawn. However, an opinion from Leading Counsel shared with ACSes Members rightly points out that now that criminal liability may arise, there is a particular need for circumspection, suggests that the absence of clarity in relation to the law requires a cautious approach and advises that if there is likely to be a problem, it may be better to head this off by inviting applications for dispensations. This is plainly sensible advice.
8. The absence of clarity in the law has already had some impact in York. A Cabinet Member has been advised not to participate in one decision which had a tangential link to his employer. The Monitoring Officer is satisfied that the interest would have been regarded as personal at the most under the old regime.
9. Members have previously discussed the uncertainty around the application of the new law to Council tax setting. The Minister has issued guidance on that issue which is attached. The guidance has provoked debate in local government circles. The ACSes President has been quoted as saying that: “legislation does not always mean what ministers may wish it to mean”.
10. While realistically there is no chance of a prosecution the Monitoring Officer has proceeded to grant the requested dispensations.

11. The earlier government guidance also contained a statement that having a disclosable pecuniary interest would prevent any form of participation from a Member even as a member of the public. At the recent training the overwhelming view of Members was that discussion starts after the public have made representations and the wording of the Act does not prevent a Member making such representations. That is also the view of the Monitoring Officer and a similar view has been expressed in another opinion from Leading Counsel shared with ACSeS Members. Nevertheless, in light of the residual uncertainty, the Committee may wish to consider specifically delegating power to the Monitoring Officer to grant dispensations in such cases as they are unlikely to be covered by the powers already delegated.
12. Members may also wish to note that the Committee on Standards in Public Life has recently indicated that it has adopted a watching brief on local government standards. The Committee has concerns as to the adequacy of sanctions available for misconduct and concerns as to whether the new arrangements for independent involvement will prove to be as robust as those they replaced.

### **Recommendations**

13. Members are recommended to:
  - 1) Clarify the application of the requirement to register offers of hospitality to the conferences referred to in paragraph 5.  
Reason: To clarify the expectations imposed on Members
  - 2) To delegate to the Monitoring Officer the power to grant dispensations enabling a Member to make representations to Council meetings in circumstances where a member of the public has identical rights.  
Reason: To avoid any uncertainty as to Members' legal position
  - 3) To note the report and to timetable a further similar for the next Municipal Year  
Reason: To allow Members to monitor the implementation and impact of the new standards regime.

## Contact Details

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**Report**  
**Approved**

**Date** 0702/13

**Wards Affected:** *List wards or tick box to indicate all*

**All**

**For further information please contact the author of the report**

**Background Papers:**

None

**Annexes**

Annex A – Code of Conduct

Annex B – Letter from Brandon Lewis M.P.