

APPENDIX A

Dear Ms Butters,

Thank you for your email of 4 March. I apologise for the delay in replying.

Although the Standards Board cannot give definitive advice in relation to specific factual situations, the following general guidance is intended to be of some assistance. It should be noted that the Standards Board's Ethical Standards Officers who are responsible for the investigation of allegations of misconduct made to the Standards Board are operationally independent. Whilst Ethical Standards Officers will be guided by the views of the Standards Board nothing contained in this letter should be taken as binding on them.

It is fair to say that paragraph 10(2) is one of the more difficult parts of the Code of Conduct to interpret.

Our view is that it should not be treated as a blanket exemption from having to declare a prejudicial interest. Members will need to consider all the circumstances before deciding whether or not it is appropriate to rely on para 10(2). Your email correctly identifies some of the factors which might make it inappropriate to rely on paragraph 10(2) (actual or anticipated financial liability or some personal relationship). Another significant area where we consider that it would be inappropriate for members to rely on 10(2) is in circumstances where the authority has to balance the interests of the outside body against other competing interests. The distribution of grant funding is an obvious example of this kind of situation. Paragraph 10(2) should not be relied on where doing so will create a clear conflict of interest on the part of the members concerned.

We do not consider that this represents a departure from the position under the former National Code of Local Government Conduct.

Please contact me if you would like to discuss this matter further.

Yours sincerely,

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-----Original Message-----

From: Jayne Butters [mailto:JButters@hastings.gov.uk]  
Sent: Thursday, March 04, 2004 3:28 PM  
To: P&G Enquiries  
Cc: Vic Kempner (E-mail)  
Subject: PARAGRAPH 10(2)(C) NATIONAL CODE OF CONDUCT

Dear Sir or Madam

I am newly appointed monitoring officer to the Council. I have recently been requested to advise members in relation to declaration of interest in relation to their appointment or nomination to at outside authority as the Authority's "representative", when an issue arises touching and concerning that outside body and its finances.

The Code states "a member may regard himself or herself as not having a prejudicial interest in a matter if that matter relates to- (c) a body to which he or she has been appointed or nominated by the authority as its representative."

In previous advice to members regarding their responsibilities towards outside bodies, it has been emphasised that when sitting on a body such as a charitable trust members may have responsibilities as trustees or those in a position of management within the body in question. This leads to potential financial liability. In essence the nominee's responsibility has to be first to the charitable trust rather than to the Council. This Council distinguishes between truly a representative role and a Council nomination to an outside body, with the former being appointed by Cabinet as representatives of the executive and the latter being appointed by a committee of the Council.

Three members declared a personal interest in a matter concerning grant funding and their nomination by the Council to the same body as the Council's "representatives". One member declared it as prejudicial and left the Chamber. The other two were advised by me as to the provision in the code, including the use of the word "may", declared a personal interest but relied on paragraph 10(2)(c) and said that it was not prejudicial. Neither

I nor members are happy at this outcome, though it is possible, of course, that the members' interests were all different in some way.

In looking at this issue, I have referred back to the former National Code of Local Government Conduct. Paragraph 12 (b) provides that notwithstanding have a clear and substantial interest, "if your interest arises from being appointed by your local authority as their representative on the managing committee, or other governing body, of a charity, voluntary body or other organisation formed by a public purpose (and not for the personal benefit of the members), you may speak and vote on matters concerning that organisation."

The dichotomy of being representative of the authority whilst also being in the position of trustee to that body is not new and would have been the position when the former code was drafted. The fact that the new code does not appear to have altered its position from that of the earlier code, tends to indicate that, whilst the interest is potentially prejudicial, the member may regard it as not being so in the limited circumstances set out in Paragraph 10(2)(c). There may, of course, be other factors such as there being actual or anticipated financial liability as a trustee or a personal relationship, over and above the interest stated in (c), which could vitiate the position.

I would be grateful for your view on the interpretation of the Code on this point. Once I have your response, I intend taking the matter to our Standards Committee for consideration with a view to giving all members advice on this paragraph of the Code.

I look forward to hearing from you.

Yours faithfully

Jayne Butters  
Borough Solicitor and Monitoring Officer  
Hastings Borough Council