

## Agenda Item:6

**Report to:** Standards Committee

**Date:** 11 October 2005

**Report from:** Borough Solicitor

**Title of report:** **DECLARATIONS OF INTEREST**

**Purpose of report:** To provide a basis for discussion with a view to giving guidance to members

**Recommendations:** Members' views are requested

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## 1.0 Introduction

1.1 In its recent Case Review (Number Three), the Standards Board for England report that in the period September 2003 to March 2005 of the 102 cases referred to local Standards Committees for adjudication, 57 of the cases related to an alleged failure by a member to declare a personal or prejudicial interest. The next largest category of allegation was of 23 cases of bringing the office or authority into disrepute. This would seem to indicate that the area of the Code giving members the greatest difficulty is that of declaration of interest.

## 2.0 Declaration of an interest

2.1 The Code defines personal and prejudicial interests as follows:-

- **Personal interest –**

“8. (1) A member must regard himself or herself as having a personal interest in any matter if the matter relates to **an interest in respect of which notification must be given under paragraphs 14 and 15 below, or if a decision upon it might reasonably be regarded as affecting to a greater extent than other council tax payers, ratepayers or inhabitants of the authority's area, the well-being or financial position of himself or herself, a relative or a friend or-**

(a) any employment or business carried on by such persons; (b) any person who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors; (c) any corporate body in which such persons have a beneficial interest in a class of securities exceeding the nominal value of £5,000; or (d) any body listed in sub-paragraphs (a) to (e) of paragraph 15 below in which such persons hold a position of general control or management.

(2) In this paragraph -

(a) "relative" means a spouse, partner, parent, parent-in-law, son, daughter, step-son, step-daughter, child of a partner, brother, sister, grandparent, grandchild, uncle, aunt, nephew, niece, or the spouse or partner of any of the preceding persons; and

(b) "partner" in sub-paragraph (2)(a) above means a member of a couple who live together.

### *Disclosure of Personal Interests*

9. (1) A member with a personal interest in a matter who attends a meeting of the authority at which the matter is considered must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.

- (2) Subject to paragraph 12(1)(b) below, a member with a personal interest in any matter who has made an executive decision in relation to that matter must ensure that any written statement of that decision records the existence and nature of that interest. “

- **Prejudicial interest**

“10. (1) Subject to sub-paragraph (2) below, a member with a personal interest in a matter also has a prejudicial interest in that matter **if the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the member's judgement of the public interest.**

- (2) A member may regard himself or herself as not having a prejudicial interest in a matter if that matter relates to-
- (a) another relevant authority of which he or she is a member;
  - (b) another public authority in which he or she holds a position of general control or management;
  - (c) a body to which he or she has been appointed or nominated by the authority as its representative;
  - (d) the housing functions of the authority where the member holds a tenancy or lease with a relevant authority, provided that he or she does not have arrears of rent with that relevant authority of more than two months, and provided that those functions do not relate particularly to the member's tenancy or lease;
  - (e) the functions of the authority in respect of school meals, transport and travelling expenses, where the member is a guardian or parent of a child in full time education, unless it relates particularly to the school which the child attends;
  - (f) the functions of the authority in respect of statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where the member is in receipt of, or is entitled to the receipt of such pay from a relevant authority; and
  - (g) the functions of the authority in respect of an allowance or payment made under sections 173 to 176 of the Local Government Act 1972 or section 18 of the Local Government and Housing Act 1989. “

2.2 That the declaration of personal and prejudicial interests should provide the main part of complaints referred to Standards Committees is hardly surprising, since

this is an area where members have the most difficulty in applying the Code to their personal circumstances. We have had situations in Council, on more than one occasion, when identical or very similar interests have been dealt with in different ways. Often there is a very rushed last minute consultation with the solicitor advising the committee and it is difficult for the solicitor to advise in that situation. The full facts, which would be available to an ethical standards officer following investigation of a complaint, are rarely relayed to the advising solicitor. The full facts relating to the interest are, on the other hand, known to the member. Members sometimes make what appear to be hasty and cursory decisions on a matter which could result, in an extreme case, in their suspension, if not disqualification, from office.

- 2.3 As all such decisions are open to scrutiny by the Standards Board, it behoves members to consider the wording of the Code carefully and to examine their interest in the light of it. Perhaps examination of the wording of the Code and some Standards Board or appellate court decisions might be helpful.

### 3.0 Personal interests

- 3.1 Paragraph 8, as shown above, refers to the interests set out in paragraphs 14 and 15 of the Code but also, more problematically, to **if a decision up it might reasonably be regarded as affecting to a greater extent than other council tax payers, ratepayers or inhabitants of the authority's area, the well-being or financial position of himself or herself, a relative or a friend or.....**

- **might reasonably be regarded**

This is an objective test. In SCRIVENS V ETHICAL STANDARDS OFFICER(2005) EWHC529(Admin), Mr. Justice Stanley Burnton accepted the argument of the ethical standards officer that there was nothing in the tests for personal and prejudicial interests which indicated a subjective approach was appropriate. He concluded "Whether a member has a personal or prejudicial interest is a question to be determined objectively. The mistaken but reasonable view of the member that he has no such interest is irrelevant. The test for a failure to comply with the code by failing to comply with (the paragraphs dealing with personal and prejudicial interests) is similarly objective." Whilst it may be for the member to decide whether or not he or she should declare an interest, it is not his or her opinion of whether or not s/he has an interest which counts, but rather the opinion of the reasonable person.

- **As affecting to a greater extent than other council tax payers etc**

For there to be an interest at all the well-being or financial position of the member/s relative or friend has to be affected to a greater extent than other council tax payers etc. Some thought needs to be addressed to what it is that makes the difference or whether the factor in fact does lead to a greater

effect, favourable or otherwise, on the well-being or financial interest. For example, a member may live in close proximity to a particular development site. Objective examination of the facts could result in a decision that there is no interest at all, that the proximity of his/her home to the site has a neutral effect or affects his well-being no more than other council tax payers etc. Perhaps, the safer route would be to declare a personal but not prejudicial interest. On a planning issue the additional question of bias arises, again against an objective test. Members would be well-advised on planning and licensing matters to err on the side of caution since this declaration or lack of it may be scrutinized by dissatisfied applicants or objectors on the particular application with a view to legal challenge of the decision, and/or vigilant fellow members with a view to reporting the individual member to the Standards Board.

- **The well-being or financial position ....**

The meaning of well-being was considered in the case of MURPHY V ETHICAL STANDARDS OFFICER ETC(2004)EWHC 2377 (Admin). In that case Councillor Murphy failed to declare an interest and withdraw when an Ombudsman's report, critical of his failure to declare an interest at a planning committee under the previous code, was considered at a meeting. The judge considered that "it would have been entirely natural for Councillor Murphy to want to salvage his reputation by getting his council to express satisfaction with the report." The judge approved the Standards Board guidance on the meaning of well-being as "a condition of contentedness, healthiness and happiness. Anything that could be said to affect a person's quality of life, either positively or negatively, is likely to affect their well-being. It is not restricted to matters affecting a person's financial position. The range of personal interests is, accordingly, likely to be very broad." Broad it might well be, but to constitute an interest it still has to be reasonably regarded as affecting the member's well-being to a greater extent than other council-tax payers etc. Members sometimes hark back to pecuniary interests and state that their interest is personal and not pecuniary. There is no such distinction under the current Code.

- **Friend**

Members regularly declare interests because a friend's wellbeing or financial position is affected by the matter under discussion. The Code does not define "friend". The word has a different meaning for different people, some describing mere acquaintances as friends, others saving that description for a very small and special number of people. Members should examine what they mean by friend against what a member of the public might perceive as such a relationship, which is likely to be somewhere between the mere acquaintance and a member of that small special group. The Standards Board have sought to give guidance to members on this and suggest the following:-

“A friend can be defined as someone well known to another and regarded with liking, affection and loyalty by that person. A closer relationship is implied here, rather than acquaintance. Members might wish to consider the following questions when considering if a friendship exists:

- How many times do the two people meet?
- Where do they meet?
- Do they regularly attend the same social events?
- Do they know each other's families?
- Do they visit each others' homes?
- Are they close or connected in other ways?

However, these questions should never be taken in isolation. It is the cumulative evidence of a close relationship that will establish a friendship.”

#### 4.0 Prejudicial Interest

- 4.1 A prejudicial interest is one “which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the member’s judgment of the public interest.”
- 4.2 Again the test is objective and it is the view of the reasonable onlooker that is decisive of the nature of the interest, not the view of the member. The member’s judgment of the public interest need not be affected at all by the interest, but perception is as important as reality and it is only a question of whether it is **likely** to be affected.
- 4.3 Once a prejudicial interest is declared, of course, the member has to leave the Chamber. It is important to remember, that members are required to declare personal and prejudicial interests if they attend a meeting of the Council (including Cabinet and committees and sub-committees) where an item on the agenda is affected by the member’s interest. The councillor does not have to be a member of the committee in question, they have only to be present. This was confirmed judicially by the case of 1) PAUL RICHARDSON (2) WENDY ORME v (1) NORTH YORKSHIRE COUNTY COUNCIL (2) THE FIRST SECRETARY OF STATE & BROWN & POTTER LTD (Interested Party) (2003). In that case the member, who attended a planning committee meeting considering an application affecting his land, sitting in the public gallery, was found to have a prejudicial interest and to be in breach of the code in not declaring it and leaving the chamber.

#### 5.0 Training

- 5.1 Members usually receive training on the Code of Conduct as part of the induction training for new members in May every other year. Whilst, there will be training arranged for new members following the elections in May 2006, Committee may

consider that training be arranged prior to that focusing on the particular issue of declarations of interest. Members' instructions are requested on this.

Equalities & Community Cohesiveness	<input type="checkbox"/>
Crime and Fear of Crime (Section 17)	<input type="checkbox"/>
Risk Management	<input type="checkbox"/>
Environmental issues	<input type="checkbox"/>
Economic / Financial implications	<input type="checkbox"/>
Human Rights Act	<input type="checkbox"/>
Organisational Consequences	<input checked="" type="checkbox"/>

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**BACKGROUND DOCUMENTS:-**

The Standards Board for England Case Review Nos. 2 & 3