

For General Release

REPORT TO:	ETHICS COMMITTEE 7 MAY 2013
AGENDA ITEM NO:	6
SUBJECT:	DCLG NON-STATUTORY GUIDE: OPENNESS AND TRANSPARENCY ON PERSONAL INTERESTS – A GUIDE FOR COUNCILLORS
LEAD OFFICER:	COUNCIL SOLICITOR, DIRECTOR OF DEMOCRATIC AND LEGAL SERVICES & MONITORING OFFICER
CABINET MEMBER:	
WARDS:	ALL
CORPORATE PRIORITY/POLICY CONTEXT: The Council has determined that the Ethics Committee shall be responsible for receiving reports from the Monitoring Officer on matters of probity and ethics for consideration.	
FINANCIAL IMPACT Implementation of the recommendations contained in this report shall be contained within existing budgets	
FORWARD PLAN KEY DECISION REFERENCE NO.: N/A	

1. RECOMMENDATIONS

The Committee is asked to:

- 1.1 Consider the contents of the report and attachment.

2. EXECUTIVE SUMMARY

- 2.1 Following statutory amendments to the ethics regime, full Council adopted a new Code of Conduct and DCLG have now produced a non-statutory guide for Members giving “basic practical information about how to be open and transparent about...personal interests” which is entitled Openness and transparency on personal interests – a guide for councillors, March 2013. A copy of the guide is attached at Appendix 1.

3. DETAIL

- 3.1 The guide is non- statutory and is not guidance issued by the Secretary of State under a specific power within the Localism Act 2011. It contains a disclaimer

that it should not be taken as providing any definitive interpretation of the statutory requirements and that Members should seek their own legal advice.

- 3.2 The guide is divided into a number of questions and answers. Whilst some sections simply restate the legislative requirements, other responses constitute an interpretation by DCLG of the legislative provisions which import additional or different requirements from those specified in the statute or regulations which govern this area. Bearing in mind that the guide's status, the latter types of matters are set out below for Members' consideration.

Participation where there is a Disclosable Pecuniary Interest (DPI):

- 3.3 Section 31 (4) of the Localism Act provides that where a Member is at a meeting and has a DPI, the Member may not—
- (a) Participate, or participate further, in any discussion of the matter at the meeting, or
 - (b) Participate in any vote, or further vote, taken on the matter at the meeting,
- 3.4 The guide states that these prohibitions relate to any form of participation, including speaking as a Member of the Public. The wording of the Act prohibits participation in the *discussion* of or voting on the matter at the meeting. The Act does not define "discussion", but some commentators have argued that this would appear to preclude making representations as was previously permitted under the old "Model" Code whilst others have argued that this prohibition relates to discussion as a Member of the Committee and that representations as a member of the public are still permitted. This area has not yet been the subject of judicial consideration therefore Members may wish to continue exercising caution.

Members having to leave the room where a DPI exists:

- 3.5 Section 31 (10) provides that a Council may provide for the exclusion of a Member from a meeting while any discussion or vote takes place in which, as a result of the operation of Section 31(4) above, the member or co-opted member may not participate.
- 3.6 The guide states that even where the Council does not so provide, a Member should leave the room if they consider that their continued presence is incompatible with the Code or the Seven Principles of Public Life.
- 3.7 This interpretation presents two issues. Firstly the old Code of Conduct provided explicitly that a Member should leave the room where there was a pecuniary interest. Legislators had the opportunity to make such an express provision in relation to the current regime and chose not to do so,
- 3.8 Secondly, the reference in the guide to Seven Principles of Public Life is potentially misleading. When the Localism Act was promulgated, it did not reference the Seven Principles of Public Life as such, but required the Code of Conduct adopted by each authority to be consistent with the principles of

selflessness, integrity, objectivity, accountability, openness, honesty, leadership.

- 3.9 How each authority chose to interpret these principles was not specified and Croydon chose to adopt a Code which encompassed the suggestions set out in the illustrative text prepared by DCLG with a few local additions. This DCLG version contained what was, at the time, the current descriptions of the above principles of selflessness, integrity, objectivity, accountability, openness, honesty, leadership. In January of this year, the Committee on Standards in Public Life chose to alter the descriptions which the Committee considered should be associated with the above principles and accordingly what is specified in respective authorities Codes of Conduct may no longer reflect the definitions of the Seven Principles of Public Life as now defined although the principles themselves are the same.

Need for dispensation for participating in setting Council Tax:

- 3.10 Section 31 (4) of the Localism Act provides that where a Member is at a meeting and has a DPI in any matter to be considered, the Member may not—
- (a) Participate, or participate further, in any discussion of the matter at the meeting, or
 - (b) Participate in any vote, or further vote, taken on the matter at the meeting,
- 3.11 The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 provide that a Member has a DPI where they have any beneficial interest in land which is within the area of the relevant authority. Unlike the old standards provisions, there is no requirement within the legislation for there to be a close connection between the interest and the matter under consideration. There are no degrees of DPI and there is no provision for the DPI to be affected before a Members' obligations under Section 31 would appear to be triggered.
- 3.12 The guide sets out that a Members' DPI in their property is not a DPI in relation to setting council tax since these decisions do not materially affect the value of the property, prospects for selling the property or how that property might be used and enjoyed. Whilst the assessment about impact on the value of the property etc may be correct in relation to council tax, a requirement for the decision to "**materially affect**" a DPI before it can properly be regarded as a DPI does not accord with the express wording of the legislation, nor has it been tested in the courts. Due to the fact that the consequences for Members of non-compliance is potential criminal sanctions, Members may wish to continue to be cautious in this regard.
- 3.13 As there is no "material impact" requirement within the legislation in relation to a DPI and Members' participation, Members of the Committee will recall that a general dispensation was granted by this Committee in November 2012 to all Croydon Members to enable participation in Council tax setting to avoid any issues for Members in this regard.

4. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

4.1 There are no direct financial or other implications arising from this report.

CONTACT OFFICERS:

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BACKGROUND DOCUMENTS:

None