

BRIEFING NOTE FOR PARISH COUNCILLORS



TOPIC: DISCLOSABLE PECUNIARY INTERESTS

FROM: MONITORING OFFICER

DATE: 29 JUNE 2012

PLEASE READ THIS CAREFULLY – THESE CHANGES APPLY FROM 1 JULY 2012

INTRODUCTION

From 1 July, important changes to the rules for declaring interests for all councillors come into effect. It is very important that all parish councillors understand the new rules, as breach can be a criminal offence.

Regulations defining the new class of interest were issued by the government on 8 June and a report setting out the changes and making proposals for their implementation is going to the meeting of South Cambridgeshire District Council on 26th July 2012.

KEY CHANGES

The following key changes take effect on 1 July 2012:

- The current regime requiring the registration and declaration of personal interests is abolished.
- There will no longer be such a thing as a “personal and prejudicial interest”.
- In their place is a class of interests known as “disclosable pecuniary interests” (“DPIs”).
- Disclosable pecuniary interests include interests held by a member’s spouse, civil partner or similar.
- Councillors must register disclosable pecuniary interests within 28 days of election, and in the first instance within 28 days of the 1st July.

- There are complicated rules about declaring disclosable pecuniary interests at meetings.
- If a member has a disclosable pecuniary interest in a matter under consideration at a meeting, they may not participate in the discussion or vote (but see “Dispensations” below).
- There is no longer any test as to whether the interest is “prejudicial”. The prohibition is absolute, unless a dispensation is obtained.
- Failure to comply with the rules is a criminal offence and may be punished by a fine of up to £5,000 and/or disqualification for up to 5 years.

WHAT IS A “DISCLOSABLE PECUNIARY INTEREST”

A full definition is attached to this note.

Disclosable personal interests are very similar to the property and financial interests that need to be registered and declared at present WITH ONE IMPORTANT DIFFERENCE.

You now need to declare, not only your own interests, but also those of:

- Your spouse or civil partner;
- A person with whom you are living as husband and wife; and
- A person with whom you are living as if you are civil partners.

The need to declare only arises if you are aware that the other person has the interest. You are not under a legal obligation to ask.

WHAT ARE MY OBLIGATIONS TO REGISTER A “DISCLOSABLE PECUNIARY INTEREST”?

You need to notify the District Council’s Monitoring Officer of disclosable pecuniary interests you have within 28 days of your election or in the first instance within 28 days of the 1st July 2012.

You are not under a legal obligation to keep the register up to date. However, if you are at a meeting that is considering something in which you have a disclosable pecuniary interest, and that interest is not registered, you must register the interest within 28 days of the meeting. The same rule applies if you are making a decision acting alone.

You must also update your entries in the register if you are re-elected.

The District Council will be deciding what Code of Conduct to adopt at its meeting on 26th July. The District Council may wish to consider including a provision requiring members to register new interests when they arise, to avoid the register being incomplete or changing standing orders to provide for this and parish councils may wish to reflect this in their own standing orders.

WHAT ARE MY OBLIGATIONS TO DECLARE A “DISCLOSABLE PECUNIARY INTEREST”?

If your interest is registered, you do not have to declare it at meetings. If your interest is not registered, then you need to declare it.

As mentioned above the Parish Council will also need to take a view on whether it will alter its standing orders to require the declaration of interests at meetings, whether registered or not.

WHAT ARE THE CONSEQUENCES OF HAVING A “DISCLOSABLE PECUNIARY INTEREST” IN A MATTER?

You may not speak or vote when the matter is being considered. There is no longer a distinction between “prejudicial” and “non-prejudicial” interests. The fact of having a disclosable pecuniary interest will always be a bar to participation, unless you obtain a dispensation.

DO I NEED TO LEAVE THE ROOM IF I HAVE A “DISCLOSABLE PECUNIARY INTEREST”?

This is a matter for the Parish Council to decide in its standing orders.

WILL THE REGISTER OF “DISCLOSABLE PECUNIARY INTERESTS” BE PUBLISHED?

Yes, there is a legal obligation to make the register available for inspection and to publish it on the parish council’s website (if there is one), or on the District Council’s website if there isn’t.

However, an interest may be exempted from publication if it is a “sensitive interest”. An interest is “sensitive” if its disclosure could lead to the member, or to someone connected with them, being subject to violence or intimidation. Responsibility for deciding whether an interest is “sensitive” is given to the Monitoring Officer.

I HAVE A DISCLOSABLE PECUNIARY INTEREST BUT WOULD LIKE A DISPENSATION TO SPEAK AND VOTE

It is possible to grant a dispensation to speak and/or vote in a wide range of circumstances. Dispensations may be granted to parish councillors where the District Council:

- considers that without the dispensation the number of persons prohibited 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 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.

The District Council will decide whether the power to grant or refuse dispensations should be delegated by the Council to a committee, sub-committee or an officer at its meeting on 26th July. New forms for application for dispensations will be made available on the Council's website. All previous dispensations granted to parish councillors will no longer be in force and new applications will need to be made using the new forms.

BREACH AND SANCTIONS

Failure to register or to declare a "declarable pecuniary interest" is a criminal offence. So is speaking and voting, unless you have a dispensation. This is punishable by a fine of up to £5,000 and/or disqualification as a councillor for up to five years.

OTHER INTERESTS

Whilst the definition of a "declarable pecuniary interest" covers a lot of ground, it is narrower in scope than interests declarable under the present Code of Conduct. It also does not cover some interests that would be clearly prejudicial; e.g. a councillor considering a planning application made by a son or daughter would not have a declarable interest under the new regime.

The District Council will need to decide if it wishes to also include the current range of interests registrable and declarable in a new Code.

COMMENCEMENT

This all takes effect **from 1 July 2012** and therefore will affect all meetings following this date. An updated form for registration of interests is attached.

HELP!

Please do contact me if you have any queries or need any help completing your registration forms.

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Appendix A
Disclosable Pecuniary Interests: Description and Definitions

<i>Disclosable Pecuniary Interest</i>	<i>description</i>
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
Contracts	Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority— (a) under which goods or services are to be provided or works are to be executed; and (b) which has not been fully discharged.
Land	Any beneficial interest in land, which is within the area of the relevant authority.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
Corporate tenancies	Any tenancy where (to M's knowledge)— (a) the landlord is the relevant authority; and (b) the tenant is a body in which the relevant person has a beneficial interest.
Securities	Any beneficial interest in securities of a body where— (a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and (b) either— (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

These descriptions on interests are subject to the following definitions:

“the Act” means the [Localism Act 2011](#);

“body in which the relevant person has a beneficial interest” means a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest;

“director” includes a member of the committee of management of an industrial and provident society;

“land” excludes an easement, servitude, interest or right in or over land, which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income;

“M” means a member of a relevant authority;

“Member” includes a co-opted member;

“relevant authority” means the authority of which M is a member;

“relevant period” means the period of 12 months ending with the day on which M gives a notification for the purposes of section 30(1) or section 31(7), as the case may be, of the Act;

“relevant person” means M or any other person referred to in section 30(3)(b) of the Act;

“securities” means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the [Financial Services and Markets Act 2000](#) and other securities of any description, other than money deposited with a building society.

Offences

It is a criminal offence to

- Fail to notify the Monitoring Officer of any Disclosable Pecuniary Interest within 28 days of election
- Fail to disclose a Disclosable Pecuniary Interest at a meeting if it is not on the register
- Fail to notify the Monitoring Officer within 28 days of a Disclosable Pecuniary Interest that is not on the register that you have disclosed to a meeting
- Participate in any discussion or vote on a matter in which you have a Disclosable Pecuniary Interest (without a dispensation)
- Knowingly or recklessly providing information that is false or misleading in notifying the Monitoring Officer of a Disclosable Pecuniary Interest or in disclosing such interest to a meeting

The criminal penalties available to a court are to impose a fine not exceeding level 5 on the standard scale and disqualification from being a Councillor for up to 5 years.