



A GUIDE TO THE NEW STANDARDS REGIME

IMPORTANT:

This document highlights key issues relating to the changes to Standards and the Code of Conduct

It is essential that all councillors, co-opted members and relevant staff are aware of its content.

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1. PURPOSE OF THIS DOCUMENT

- 1.1. This document has been prepared because of the changes to the rules and processes relating to standards and the conduct of members and co-opted members of Councils which came into effect on 1 July 2012.
- 1.2. The document is a brief guide to some of the immediate points of which councillors, co-opted members, and staff need to be aware. It is not intended to be regarded as exhaustive information or final guidance, and it is likely that it will be supplemented or replaced in due course.
- 1.3. As the document will also be supplied to Parish Clerks, it contains specific references to Town/Parish Councils where appropriate.

2. WHY THE CHANGES TO THE STANDARDS REGIME?

- 2.1. The changes described in this document have arisen as a result of the Localism Act 2011, and regulations made under the Act.

3. THE CODE OF CONDUCT – GENERAL INFORMATION

- 3.1. The Act places a general obligation on Councils (including Town and Parish Councils) to *"promote and maintain high standards of conduct by members and co-opted members of the authority"* and *"in particular"* to *"adopt a code dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity"*.
- 3.2. It is no longer the case that the Code of Conduct adopted by councils has to be based on a model code prescribed by the Secretary of State, nor that what were called *"mandatory provisions"* have to be included in it. Rather, the Code must *"when viewed as a whole"* be *"consistent with the following principles"*:
 - selflessness
 - integrity
 - objectivity
 - accountability
 - openness
 - honesty
 - leadership
- 3.3. The Act also provides that Councils must ensure that their *"Code of Conduct includes the provision the authority considers appropriate in respect of the registration in its register, and disclosure, of"*
 - ❖ *pecuniary interests*
 - ❖ *interests other than pecuniary interests"*.
- 3.4. Stratford-on-Avon District Council adopted the Code attached as Appendix A to this document on 23 July 2012. With the support of the Warwickshire and West Midlands Association of Local Councils I am recommending to Town and Parish Councils in the District that they adopt the same code. At the time of writing this document, it is not known whether any Town and Parish Councils have chosen to adopt something different from what is recommended.
- 3.5. The Code in [Appendix A](#) does not contain any provisions in relation to non-pecuniary interests. This is not a requirement under the new legislation.
- 3.6. It is a requirement of the Act that *"A relevant authority must publicise its adoption, revision or replacement of a Code of Conduct in such manner as it considers is likely to bring the adoption, revision or replacement of the Code of Conduct to the attention of persons who live in its area"*. **A Town or Parish Council is a "relevant authority" for this purpose and so is obliged to**

publicise its adoption of a Code of Conduct. It can do this via its website (if it has one) a newsletter or a public notice board.

4. APPLYING THE CODE

- 4.1. The Code is brief and is designed to be readily understandable. It is the form of Code recommended by the Department of Communities and Local Government. It is essential that all members, co-opted members and relevant officers take the time to read and understand its provisions.
- 4.2. The first part of the Code sets out the behaviours and characteristics required of councillors. It is important to appreciate that the Code applies when a councillor or co-opted member is acting in that role and that it is their responsibility to comply with its provisions.
- 4.3. The second part of the Code (in the box) relates to registering and declaring interests. More information and comment about the registration and disclosure of interests is included in Sections [5](#) and [6](#) respectively [below](#).
- 4.4. The Act provides for dealing with a failure to comply with the Code but makes it clear that a decision is not invalidated because "*something that occurred in the process of making the decision involved a failure to comply with the code*".
- 4.5. This document, including the Code in [Appendix A](#), is being supplied to the Clerks of the Parish Councils in the Stratford-on-Avon District, where possible, electronically and, where not possible, in hard copy. ***Parish Clerks are requested to circulate/forward it to all members of their Council.***

5. REGISTRATION OF INTERESTS

- 5.1. The Act requires Monitoring Officers to "*establish and maintain a register of interests of members and co-opted members of the authority*". In Warwickshire, the Monitoring Officer for a Parish or Town Council is the Monitoring Officer of the relevant District Council. As previously, the register has to be available for public inspection but there is also a new requirement that it is published on the website of the Principal Council and, where there is one, on the website of the relevant Town or Parish council.
- 5.2. In practice, it is anticipated that Town and Parish Councils may choose to provide a link to the relevant page of the District Council's website, ***but the duty to publish the register on a Town or Parish Council website lies with the Town or Parish Council concerned so it will be for each local Council to decide how to comply.*** Additionally, the Act obliges District Councils to supply Parish Councils "*with any data it needs to comply*" with the website publication requirement. Clerks will be contacted about this in due course if necessary.
- 5.3. The Act requires a member or co-opted member to notify the Monitoring Officer of any "*disclosable pecuniary interests*" (as to which see [Section 6 below](#)) within 28 days of becoming a member or co-opted member; and states that, upon re-election or re-appointment the requirement relates only to any such interests not already included in the register.
- 5.4. ***However, all members and co-opted members of Councils in Stratford-on-Avon District are asked to notify their disclosable pecuniary interests within 28 days of their Council adopting a new Code of Conduct.*** This is partly because what must be registered differs from the previous provisions and in particular includes interests of a spouse or partner but, is also because the cycle of elections means that otherwise it could be nearly four years before all councillors have registered their interests.

- 5.5. The reason that Members are being asked to notify their disclosable pecuniary interests within this timescale is influenced by the risk of criminal sanction if a matter is not registered and subsequently not disclosed at a meeting. [Section 8 below](#) gives more information about the criminal offences introduced under the Act.
- 5.6. Unlike the situation prior to 1 July 2012, there is no obligation to notify the Monitoring Officer of any **changes** to registerable interests within 28 days of the change, ***other than where an interest has been disclosed at a meeting and is neither included in the register nor the subject of a "pending notification"***. A pending notification is one where the Monitoring Officer has been notified of the interest but it has not yet been entered in the register.
- 5.7. The absence of a requirement to notify changes to disclosable pecuniary interests does not prevent a councillor from doing so, which would be regarded as good practice, consistent with the general obligations which all councils have.
- 5.8. All members of the Council will be supplied with a form for notifying their disclosable interests. Forms will also be supplied to Parish Clerks for distribution to their members. Extracts from the notes which will accompany the form are included at [Appendix B](#) in order that members and relevant staff may familiarise themselves with the matters which members are required to notify/disclose at meetings.

6. DISCLOSURE OF INTERESTS AND PARTICIPATION AT MEETINGS

- 6.1. The Code requires that, at a meeting, where a member or co-opted member has a disclosable pecuniary interest (of which they are aware) in any matter being considered, they disclose that interest to the meeting. ***It is essential that members and co-opted members do this clearly, in order that the disclosure may be recorded, which will protect the member in the event of a subsequent allegation.***
- 6.2. ***The requirement to disclose such interests is applicable from 1 July 2012, whether or not the interests have been notified to the Monitoring Officer.*** The Council will include an appropriate item on agendas for all meetings, to facilitate this. Parish Clerks are also encouraged to include such an item on the agenda for all meetings of their Council and any committees.
- 6.3. Although not explicitly required by the legislation or by the Code, it is recommended that in the interests of transparency and, for the benefit of all in attendance at the meeting (including members of the public) the **nature** as well as the **existence** of the interest, is disclosed.
- 6.4. A member or co-opted member who has disclosed a pecuniary interest at a meeting must not participate (or participate further) in any discussion of the matter and, must not participate in any vote or further vote taken and, at Stratford-on-Avon District Council must withdraw from the room. Town and Parish Councils are recommended to include a provision in their Standing Orders requiring a member to withdraw from the room in this situation.
- 6.5. However, the requirement in paragraph 6.4 above not to participate does not apply in the event of a dispensation having been granted. [Section 9](#) below gives more information about dispensations.

7. ADDITIONAL IMPORTANT POINTS RELATING TO THE DISCLOSURE OF INTERESTS

- 7.1. The great majority of members and co-opted members of the Council and of the Parish Councils within the District have become familiar with the disclosure of interests requirements contained in the Code of Conduct which became effective in June 2007. But there are some very significant differences:

- The concept of personal or personal and prejudicial interests will no longer apply
- There is no provision for a councillor with a disclosable pecuniary interest (i.e. essentially the equivalent of a prejudicial interest in the previous Code) to address a meeting. (However, there has been some debate as to whether the way the statute is worded enables a member to address a meeting before leaving. Further guidance on this is awaited and the intention is to clarify the point as soon as possible. In the meantime members are advised that the safest course of action is to leave the meeting at the start of the item).
- There is no replication of the tests in the current Code to determine whether an interest bars participation – the Act simply provides that if a member or co-opted member has a disclosable interest in any matter of which they are aware and no dispensation has been granted, they must not participate.
- Because disclosable pecuniary interests are solely as defined in regulations (and as reproduced/summarised in the notes to the form at [Appendix B](#)) and because there is currently no provision (and does not need to be any such provision) in the Code of Conduct relating to non-pecuniary interests, there is no requirement to register or disclose interests relating (as examples) to membership of other Councils, or organisations to which a member has been appointed or nominated by their Council.
- As explained in [Appendix B](#) disclosable pecuniary interests are those of the member or co-opted member and their spouse/partner or equivalent. They do not extend, for example, to other councillors or friends.

- 7.2. However, it is not automatically safe for members and co-opted members to take part/be involved in matters which do not appear to be covered by the disclosure provisions. As an example, if a member of a planning committee took part and voted in favour of a planning application submitted by a relative or close friend, that could constitute maladministration if it became the subject of an ombudsman complaint and could, in any event, be argued to be contrary to the provision in the code that "*You must act solely in the public interest and should never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family or close associates*". A decision could also be subject to judicial review in the event of actual or apparent bias.
- 7.3. There could also be occasions where there was a conflict of interest, for example, because of membership of another Council or of an organisation.
- 7.4. ***It is therefore essential that the Code is viewed as a whole, that regard continues to be paid to the perception of the public, and that advice is sought in advance of a meeting if a member is uncertain of their approach.***

8. CRIMINAL OFFENCES

- 8.1. A failure to register a disclosable pecuniary interest within 28 days of election or co-option (or re-election or re-appointment), or the provision of false or misleading information on registration, or participation in discussion or voting in a meeting on a matter in which the member or co-opted member has a disclosable pecuniary interest, are criminal offences.
- 8.2. Such offences will carry a potential Scale 5 fine of £5000 and/or disqualification for up to five years. Prosecution is at the instigation of the Director of Public Prosecutions.

9. DISPENSATIONS

- 9.1. The Act allows for dispensations to be granted in respect of either or both of the prohibitions mentioned in paragraph 6.4 above. That is to say, the dispensation could allow participation only, or could enable both participation and voting.
- 9.2. There are specific circumstances in which a dispensation may be granted which are that a dispensation is possible only if, "*after having had regard to all relevant circumstances, the authority—*
- (a) *considers that without the dispensation the number of persons prohibited by section 31(4) 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;*
 - (b) *considers that without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business;*
 - (c) *considers that granting the dispensation is in the interests of persons living in the authority's area;*
 - (d) *if it is an authority to which Part 1A of the Local Government Act 2000 applies and is operating executive arrangements, considers that without the dispensation each member of the authority's executive would be prohibited by section 31(4) from participating in any particular business to be transacted by the authority's executive, or;*
 - (e) *considers that it is otherwise appropriate to grant a dispensation".*
- 9.3. An application for a dispensation has to be made in writing to the proper officer of the Council; and if granted the dispensation must specify the period for which it has effect, which may not exceed four years.
- 9.4. For Stratford-on-Avon District Council, authority to determine applications for a dispensation is the responsibility of the new Standards Committee although authority may be delegated to the Monitoring Officer to determine applications made on certain of the grounds. It is desirable that applications are made in good time as it is unlikely to be possible to determine an application in less than two weeks of it being made.
- 9.5. ***For Parish Councils, applications have to be made to the Parish Council concerned, and not (as previously) to the District Council.*** It is important that this is considered by local councils, and appropriate arrangements put in place. Included at [Appendix C](#) are the relevant extracts from the recently updated Legal Topic Note no. 80 produced by the National Association of Local Councils. It is understood that the full Legal Topic Note is available to member councils from the Warwickshire and West Midlands Association of Local Councils.

10. COMPLAINTS

- 10.1. The Council is obliged to have in place arrangements for the handling of complaints which allege that a member or co-opted member of the Council, or of a Parish Council in the District, has failed to comply with their authority's Code of Conduct.
- 10.2. These arrangements will shortly be published on the Council's website. In the event of a complaint, the member or co-opted member who is the subject of the complaint will be advised of the procedure; and if a complaint relates to a member or co-opted member of a Parish Council, the Clerk of the Council will also be advised appropriately.

11. STANDARDS COMMITTEE

- 11.1. Under the Local Government Act 2000, the District Council was required to constitute a Standards Committee, and there were detailed rules around the role and composition of the Committee. The Committee formerly established under those provisions ceased to exist on 1 July 2012.
- 11.2. The Council has established a Standards Committee which will from 23 July be the body which:
 - (i) considers general matters relevant to member standards; and
 - (ii) conducts any Hearings which take place where an alleged breach of the Code has been the subject of an investigation which concludes that there was a failure to comply.
- 11.3. Members of the Council and Parish Clerks will, as appropriate, be advised of matters considered by the Standards Committee, and the papers for the Committee will be available on the Council's website.

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Stratford-on-Avon District Council



APPENDIX A

STRATFORD-ON-AVON DISTRICT COUNCIL CODE OF MEMBERS' CONDUCT

Illustrative text for Code dealing with the conduct expected of members and co-opted members of the authority when acting in that capacity

You are a member or co-opted member of the Southam Town Council and hence you shall have regard to the following principles – selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

Accordingly, when acting in your capacity as a member or co-opted member:

You must act solely in the public interest and should never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, a friend or close associate.

You must not place yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties. When carrying out your public duties you must make all choices, such as making public appointments, awarding contracts or recommending individuals for rewards or benefits, on merit.

You are accountable for your decisions to the public and you must co-operate fully with whatever scrutiny is appropriate to your office.

You must be as open as possible about your decisions and actions and the decisions and actions of your authority and should be prepared to give reasons for those decisions and actions.

You must declare any private interests, both pecuniary and non-pecuniary, that relate to your public duties and must take steps to resolve any conflicts arising in a way that protects the public interest, including registering and declaring interests in a manner conforming with the procedures set out in the box below.

You must, when using or authorising the use by others of the resources of your authority, ensure that such resources are not used improperly for political purposes (including party political purposes) and you must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

You must promote and support high standards of conduct when serving in your public post, in particular as characterised by the above requirements, by leadership and example.

Registering and declaring pecuniary and non-pecuniary interests

You must, within 28 days of taking office as a member or co-opted member, notify your authority's Monitoring Officer of any disclosable pecuniary interest as defined by regulations made by the Secretary of State, where the pecuniary interest is yours, your spouse's or civil partner's, or is the pecuniary interest of somebody with whom you are living with as a husband or wife, or as if you were civil partners.

In addition, you must, within 28 days of taking office as a member or co-opted member, notify your authority's monitoring officer of any disclosable pecuniary or non-pecuniary interest which your authority has decided should be included in the register.

If an interest has not been entered onto the authority's register, then the member must disclose the interest to any meeting of the authority at which they are present, where they have a disclosable interest in any matter being considered and where the matter is not a 'sensitive interest'.¹

Following any disclosure of an interest not on the authority's register or the subject of pending notification, you must notify the monitoring officer of the interest within 28 days beginning with the date of disclosure.

Unless dispensation has been granted, you may not participate in any discussion of, vote on, or discharge any function related to any matter in which you have a pecuniary interest as defined by regulations made by the Secretary of State. Additionally, you must observe the restrictions your authority places on your involvement in matters where you have a pecuniary or non-pecuniary interest as defined by your authority.

¹ A 'sensitive interest' is described in the Localism Act 2011 as a member or co-opted member of an authority having an interest, and the nature of the interest being such that the member or co-opted member, and the authority's monitoring officer, consider that disclosure of the details of the interest could lead to the member or co-opted member, or a person connected with the member or co-opted member, being subject to violence or intimidation.

DISCLOSABLE PECUNIARY INTERESTS

The following are extracts from the notes which will accompany the form for notifying disclosable pecuniary interests, and are included so that readers are fully aware of them and should be read in conjunction with Sections [5](#) and [6](#) of the covering [Guidance Notes](#).

Whose interests must be notified?

The Act provides that the interests which must be notified are those of a member or co-opted member of the authority, or

- those of a spouse or civil partner of the member or co-opted member;
- those of a person with whom the member or co-opted member is living as husband/wife;
- those of a person with whom the member or co-opted member is living as if they were civil partners.

(In each case where the member or co-opted member is aware that the other person has the interest).

When should the Monitoring Officer be notified of disclosable pecuniary interests?

As a member or co-opted member you must, before the end of 28 days beginning with the day on which you became a member or co-opted member of the authority, notify the authority's Monitoring Officer of any disclosable pecuniary interests which you or your spouse or civil partner or equivalent have at the time when the notification is given. You are also requested to notify within 28 days of the date on which your Council adopts its new Code of Conduct.

On re-election or re-appointment as a member or co-opted member you should notify the Monitoring Officer of any disclosable pecuniary interests which you or your spouse or civil partner or equivalent have, and which you have not previously notified. You should do this before the end of 28 days beginning with the day on which you were re-elected or re-appointed.

Following any disclosure of an interest not on the Council's register or the subject of a pending notification, you must notify the Monitoring Officer of the interest within 28 days beginning with the date of disclosure. (A pending notification is one where the Monitoring Officer has been notified of the interest but it has not yet been entered in the register).

Sensitive Information

If you have an interest the nature of which is that you and the Monitoring Officer of the District Council consider that disclosure of the details of the interest could lead to you, or a person connected with you, being subject to violence or intimidation, then details of that interest will be excluded from copies of the interests register which are available for inspection, as well as any published version of the register. Those versions may, however, state that you or your spouse or civil partner or equivalent has an interest, the details of which are withheld because of this provision.

Please contact the Monitoring Officer if you wish to discuss this aspect.

Section 1: Employment etc

You must include "any employment, office, trade, profession or vocation carried on for profit or gain".

Please ensure that

- you include a short description of the activity concerned: for example, "Computer Operator" or "Accountant";
- you give the name of the employer, e.g. the company which pays your salary or wages;
- where an office is held, the name of the person or body that made the appointment is given.

Section 2: Sponsorship

You must include any payment or provision of any other financial benefit (other than from the Council of which you are a member or co-opted member) made or provided within the relevant period in respect of any expenses incurred by you in carrying out your duties as a member, or towards your election expenses. (The "relevant period" being the period of twelve months ending with the day when you make a notification). This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.

Section 3: Contracts

You must include details of any contract between you, or your spouse, civil partner or equivalent, or a body in which either of you have a beneficial interest, and the Council of which you are a member or co-opted member:

- under which goods or services are to be provided or works are to be executed; **and**
- which has not been fully discharged

(A body in which you or your spouse, civil partner or equivalent have a beneficial interest means a firm in which you/they are a partner, or a body corporate of which you/they are a director¹, or in the securities of which you/they have a beneficial interest).

Section 4: Land

You must include details of any land which is within the area of your council in which you or your spouse, civil partner or equivalent have a beneficial interest.

"Land" excludes an easement, servitude, interest or right in or over land which does not carry with it a right for you or your spouse, civil partner or equivalent (alone or jointly with another) to occupy the land or to receive income

Please ensure that:

- you give the address or a brief description to identify the land;
- if you live in the area of the council of which you are a member or co-opted member, you include your home under this heading as owner, lessee or tenant.

Section 5: Licences

You must include details of any land which is within the area of your Council for which you or your spouse, civil partner or equivalent hold a licence (alone or jointly with others) to occupy for a month or longer.

Please ensure that you give the address or a brief description to identify the land.

Section 6: Corporate Tenancies

You must include details of any tenancy where (to your knowledge)

- (a) the landlord is the Council of which you are a member or co-opted member; and
- (b) the tenant is a body in which you or your spouse, civil partner or equivalent have a beneficial interest.

(A body in which you or your spouse, civil partner or equivalent have a beneficial interest means a firm in which you/they are a partner, or a body corporate of which you/they are a director², or in the securities of which you/they have a beneficial interest).

Section 7: Securities

You must include details of any beneficial interest of you or your spouse, civil partner or equivalent in securities of a body where:

- (a) that body (to your knowledge) has a place of business or land in the area of the Council of which you are a member or co-opted member; and

¹ "Director" includes a member of the committee of management of an industrial and provident society.

² "Director" includes a member of the committee of management of an industrial and provident society.

(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 you or your spouse, civil partner or equivalent have a beneficial interest exceeds one hundredth of the total issued share capital of that class.

Please note that:

- "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
- You do not have to show the extent of your interest.

Other Points

- If you are in doubt about the completion of this notification form, you may seek further guidance from the Council's Monitoring Officer.
- A copy of the form will be available for public inspection, and the details of your notifications will be available on the website of the District Council
- If you have completed this notification as a member of a Town or Parish Council, **please be aware that the information will also be available via that Council's website, if it has one.**

**FOR TOWN AND PARISH COUNCILS ONLY: EXTRACTS FROM LEGAL
TOPIC NOTE NO. 80 PRODUCED BY THE NATIONAL ASSOCIATION OF
LOCAL COUNCILS**

31. S.33 of the 2011 Act, in force on 1 July 2012, permits a Parish Council to grant a dispensation to a member or co-opted member to allow him/her to participate in a discussion or vote on a matter in which he/she has a disclosable pecuniary interest. A member must submit a written request for any such dispensation to the Parish Council's Proper Officer. Dispensations may be granted by Full Council, or such function may be discharged by a committee or officer pursuant to s. 101(1) of the 1972 Act. A Parish Council may grant a dispensation if, having had regard to all relevant circumstances, it considers that:-
- a) 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 or;
 - b) granting the dispensation is in the interests of persons living in the council's area or;
 - c) it is otherwise appropriate to grant a dispensation.
32. A dispensation, when granted, must specify the period for which it has effect, and the period specified may not exceed four years. (s.33 (3)).
33. If Full Council (or a committee) has responsibility for considering/granting dispensations, it may consider applications by calling an extraordinary meeting in advance of the meeting that the dispensation is required for. Alternatively, an application for a dispensation may be considered/granted at the meeting at which it is required. The application for a dispensation may be considered as a standing item of business on the agenda, to be considered after the names of those members present and absent (and approval, as appropriate, for absence) at the meeting have been recorded. By virtue of Article 2 of the 2012 Regulations, in force on 7 June 2012, a parish council may grant a dispensation to take effect on or after 1 July 2012.