

Cheltenham Borough Council

Standards Committee

3rd February 2020

Code of Members' Conduct – "Other Interests" – Restrictions on Participation in Decisions

Accountable member	Cabinet Member, Corporate Services, Councillor Alex Hegenbarth
Accountable officer	Borough Solicitor and Monitoring Officer
Key Decision	No
Executive summary	<p>This report considers the Code of Conduct and Council Procedure Rules and to restrictions on the participation by Members in matters in which they have an "other" interest as described in the Code of Conduct (attached) Clause 10 and Appendix B. These include a requirement that Councillors who are appointed by the Council to Companies and Trusts, and who are required to act in the interests of those bodies, do not participate in the discussion or decision and they must leave the meeting during that discussion. The Committee is being asked to consider whether it wishes to remove the requirement for Members who are nominated to Companies and Trusts to leave the meeting while the item in which they have an interest is discussed. The report sets out the circumstances in which Members can currently participate, namely during the public participation slot or by seeking dispensation. The report also refers to changes in the conduct regime which have been recommended by the Committee for Standards in Public Life, one of which is that a Model Code is expected to be produced for consideration in July this year.</p>
Recommendations	<p>To determine whether the Committee wishes to recommend to the Council any amendments to the Cheltenham Borough Council Code of Members' Conduct</p>

Financial implications	<p>There are no financial implications from this report.</p> <p>Contact officer: Paul Jones, Executive Director</p> <p>Email: paul.jones@cheltenham.gcsx.gov.uk, Tel No: 01242 775154</p>
Legal implications	<p>Any legal implications are set out in the report.</p> <p>Contact officer: Sara Freckleton, Borough Solicitor and Monitoring Officer</p> <p>Email: sara.freckleton@tewkesbury.gov.uk, Tel No: 01684 272011</p>

**HR implications
(including learning and
organisational
development)**

There are no HR implications arising from the content of this report.

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1. Background

Code of Conduct

- 1.1 Cheltenham Borough Council's Code of Members Conduct (attached) includes rules on the registration and declaration of interests. Clause 10 and Appendix B of the Code provide that a member has an "other interest" if they hold a position of general control or management on any body (e.g. a Company / Trust) to which they have been appointed or nominated by the Council. Examples relevant to CBC are Gloucestershire Airport, Cheltenham Borough Homes, Publica, The Cheltenham Trust to which Councillors are nominated by the Council to serve as Directors / Trustees.
- 1.2 The Code further requires that if a Member who has such an interest is present at a meeting where an item of business is being considered which affects the financial position of the body giving rise to the interest and where a member of the public, knowing the facts, would reasonably regard it as so significant that it would prejudice the Member's judgment of the public interest, the Member must leave the meeting and not participate in the debate / decision on that item.
- 1.3 Members with such an interest may, however, make submissions, answer questions or give evidence in relation to that item of business provided that members of the public could also attend to make such submissions, but, unlike members of the public, the Member with the interest must withdraw from the meeting immediately after making their submission.
- 1.4 A Member may apply for a Dispensation to speak and vote on the item in which they have an interest.

Members of the Council as Company Directors / Trustees

- 1.5 The law places a duty on Company Directors to "act honestly and in good faith and in the best interests of the company as a whole". Trustees have a similar fiduciary responsibility to their Trust.
- 1.6 It is irrelevant, as far as the above duty is concerned, that the Director / Trustee is nominated by the Council. A common misnomer is that Members appointed to these bodies are there to "keep an eye on it from a Council perspective" but this is incorrect; the role of the Council is that it has nomination rights and, once appointed, the Directors / Trustees are members of that outside organisation with the responsibilities described above.
- 1.7 Members of the Council are required to make decisions in the public interest.

Council Constitution

- 1.8 The Council's Rules of Procedure set out at Rule 14A

"A Member must withdraw from a meeting (including from the public area / gallery) during the whole of the consideration of any item of business in which the Member has a Disclosable Pecuniary Interest, or in which the Member has an "other" interest where, as a consequence of Paragraph 10(4) of the Council's Code of Conduct, the Member is required to leave the meeting and not participate or vote on the matter, unless the Member is permitted to remain through the granting of a dispensation."

2. Matter for consideration

- 2.1 The Standards Committee has been asked to consider whether there should be an amendment to the Code of Conduct to allow a Member who has an "other" interest in an item of business as described above, to remain in the meeting whilst the item of business is discussed and determined.
- 2.2 The request arose from advice provided at a Council meeting which confirmed the position set out in 1.1–1.2 above. The view of some Councillors is that the requirements of the Code of Conduct are too onerous and that it would be appropriate to make an amendment to allow Members with "other

interests”, such as those described above, to remain in the meeting when these items are discussed. The requirement for the member to refrain from participation and not to vote would remain.

2.3 In the event that the Committee wishes to make the amendment suggested, the changes to the Code of Conduct together with the consequential change to the Constitution are decisions to be taken by the Council.

3. Consideration of the Request

3.1 As Members may recall, there was, prior to the Localism Act 2011, a mandatory Code of Conduct which applied to all Local Authority Members. The Localism Act, instead, required that Councils adopt their own Code of Conduct which is consistent with the 7 Principles of Public Life (selflessness, integrity, objectivity, accountability, openness, honesty and leadership). Any Code of Conduct which is adopted by a Local Authority must include appropriate provisions in respect of the registration and disclosure of interests which are prescribed by statute, Disclosable Pecuniary Interests (set out in Appendix A of the CBC Code attached) and “Other Interests” (set out in Appendix B and Clause 10 of the CBC Code attached). The statutory position in respect of Pecuniary interests is that Members cannot participate in any discussion on an item in which they have such an interest and neither can they vote. The Localism Act goes on to provide that “Standing orders of a relevant authority may provide for the exclusion of a member or co-opted member of the authority from a meeting while any discussion or vote takes place in which the member would be prevented from voting due to their interest”. Prior to the Localism Act, case law had established that Members with a Code of Conduct interest should leave the meeting during discussion and decision on that matter and further that it was not sufficient for them to retire to the back of the room or to the public gallery. The rationale was that remaining in the meeting at which their colleagues were debating and deciding that matter, created the perception that they were seeking improperly to influence the decision.

3.2 When CBC adopted its Code of Conduct in 2012, it included a requirement that Members leave the meeting whilst any item in which they have a Code of Conduct interest which precludes them participating. This requirement is also included in the Council’s Rules of Procedure within the Constitution. However, any member with an “other interest” is permitted to address the meeting in the same way as a member of the public, provided that the member leaves the meeting whilst the item of business is discussed / decided. Further a member may seek dispensation to speak and vote on the matter. The statutory grounds upon which dispensation can be granted are that

- the number of members precluded from participating would impede the transaction of the business (i.e. the meeting would not be quorate)
- the political representation would be so upset that it would alter the likely outcome of any vote on the business
- granting the dispensation is in the interests of persons living in the area
- it is otherwise appropriate to grant a dispensation

This approach is taken by many other Local Authorities, with Members declaring interests, being required to withdraw from the meeting. It is the case in 5 of the 6 Gloucestershire District Councils.

3.3 The Standards Committee constantly monitors the operation of the Code of Conduct by reviewing all complaints (Borough Councillors and Parish Councillors) which have been received and determined by the Monitoring Officer. There have been no changes recommended to the Code since its adoption and with the numbers of complaints since 2012 being relatively low, the Code appears to have worked well.

3.4 During 2018 the Committee for Standards in Public Life reviewed the current Conduct regime and issued a report in January 2019 making a number of recommendations. This report was considered by the Committee at its meeting in July 2019. The review recognised that there are now many

different Codes of Conduct in place within local authorities and that this might, particularly where there are different codes in place in the same geographic area, be confusing to the public. The Committee recommended that a Model Code be produced for Local Authorities to consider. The LGA has been tasked with drafting a model Code and it is understood that this is intended to be available by July this year. The Standards Committee will, of course, be considering this model code in due course and, if deemed necessary and appropriate, will be recommending changes to the Council

- 3.5 In the meantime, the Committee is being asked to consider the request and determine whether it wishes to recommend any amendments to the requirement for members with interests to withdraw from the meeting whilst that item is decided.
- 3.6 Whilst it is not mandatory to retain the provision, the Monitoring Officer's advice is that there are risks in removing the requirement. Members have apparently accepted that Members with such interests could not appropriately take part in a debate or vote on a matter (other than using the public session or with the benefit of a dispensation) and therefore there does not appear to be any particular purpose to be served by the Member remaining in the meeting. Furthermore, it may be considered to lack transparency, particularly where an item is taken in exempt session to which the public are not admitted and it would not be webcast so that there could be no assurance that the Member did not, by word or action, improperly influence the vote. Furthermore, in the event that the code requirements are relaxed as requested and at a meeting at which a Member is present (despite having an interest) was to receive confidential financial or legal advice in respect of a company / trust, it would be inappropriate for a Director / Trustee of the body to be privy to that advice.
- 3.7 It would, in the Monitoring Officer's view, be preferable to await the deliberations of the LGA on the model form of code before making any amendments to the Code of Conduct.

4. Recommendation

- 4.1 The Committee is asked to determine whether it wishes to recommend that the Council make any amendment to the Code of Members' Conduct

5. Consultation and Feedback

- 5.1 The Constitution Working Group is considering the matter at its meeting on the 27th January and its views will be fed back to the Committee at the meeting

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Appendices	Cheltenham Borough Council Code of Members' Conduct
Background information	None