

EXETER CITY COUNCIL

AUDIT AND GOVERNANCE COMMITTEE 27 NOVEMBER 2013

MEMBER'S CODE OF CONDUCT UPDATE

1. PURPOSE OF THE REPORT

- 1.1 To remind members of the obligations on them to comply with the requirement of Exeter City Council's Code of Conduct for Members set out as Appendix 1 to this report.
- 1.2 To acquaint members with the Department of Communities and Local Government recent Guidance "Openness and transparency on personal interest" dated September 2013 set out at Appendix 4 to this report.
- 3 To remind members of the provisions of Section 106 of the Local Government Finance Act 1992.

2. Register of Discloseable Pecuniary Interests:

- 2.1 Members are required by the Localism Act 2011 to register their Pecuniary Interests. These are:
 - Employment, office, trade, profession or vocation carried out for profit or gain.
 - Sponsorship for or payment of expenses incurred by the member including elections.
 - Contracts for goods, services or works with the City council.
 - Land in Exeter in which the member has a beneficial interest.
 - Licence over land owned by the City Council
 - Tenancies between the council and an organisation in which the member has a beneficial interest.
 - Securities or shares with a value of at least £25,000 or more than 1/100 of the total issued share.
- 2.2 Members are reminded that they are also required to register their spouse and civil partner's (or any person with whom they are living with as husband or wife or civil partner) Pecuniary Interest where they are aware of them.
- 2.3 Pecuniary interest so disclosed will be maintained by the Monitoring Officer Baan Al-Khafaji and published on the Council's website.

The Monitoring Officer will endeavour to remind members to update their disclosure every six months using the form set out in Appendix 2 to this report. However, Members are reminded that the obligation to disclose interest rests with them. Disclosure of any new interest must be made to the Monitoring officer within 28 days.
- 2.4 Where a member discloses an interest, he/she must not participate in any discussion or vote on the matter at the meeting and leave the room. It is a criminal offence for a member, without reasonable excuse, to fail to notify the Monitoring Officer of a

Disclosable Pecuniary Interest or participates in any discussion or vote at a meeting where he/she had a disclosable pecuniary interest.

A Member guilty of an offence may be liable, on conviction in the Magistrates Court, to a fine not exceeding Level 5 on the standard scale (currently £5,000).

3. Declaration of Interest under Part 2 of Exeter City Council's Code of Conduct.

- 3.1 Members are reminded that they are required to declare at any Council meeting any interest where they have:

" ... any other interest in any business of the Council where it relates to the well being or financial position of the member, his/her friend, relative or close associate where a member of the public, knowing the relevant facts, would reasonably think the existence of the interest in question is likely to affect the member's judgment of the public interest."

When making such a declaration, Members are asked to complete the form prepared by the Monitoring Officer for this purpose set out in Appendix 3 to this report.

4. Department for Communities and Local Government's new Guidance on Personal Interests.

- 4.1 The new Local Government Minister Brendon Lewis has circulated amended Guidance on the registration and declaration of member's interest, highlighting the issue of trade union membership. This new Guidance is attached to this report as Appendix 4.
- 4.2 Unlike the old legislation, part 1 of the Localism Act does not empower the Secretary of state to issue statutory Guidance, so the Minister's guidance does not have the force of law.
- 4.3 The Legal requirement obliging members to register Pecuniary Interest is set out in the Relevant Authorities (Discloseable Pecuniary Interests) Regulations 2012. This lists the Pecuniary Interests which elected members must place on the public register or declare at meetings. These are set out in brief in paragraph 2.1 above.
- 4.4 The definition of Pecuniary Interests includes "sponsorship in respect of any expenses incurred for or payment of expenses incurred by the member in carrying out duties as a member, or towards a members election expenses". The regulations then say "This included any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
- 4.5 It is the Monitoring Officer view that this latest Guidance requiring members to declare their trade union membership goes beyond the legal requirement set out in the Relevant Authorities (Discloseable Pecuniary Interests) Regulations 2012. The new Guidance states:

" all sitting councillors need to register their declarable interests – both declarable pecuniary interests and other interest that must be declared and registered as required by your authorities code, or your duty to act in conformity with the seven principles of public life such as your membership of any Trade Union"

However, it is the Monitoring Officer view that this Guidance cannot oblige a member to register or declare trade union membership if the member does not receive sponsorship since the legislation does not require members to do so.

4.6 Of course it is open to members to decide whether to amend the Code of Conduct to include the requirement to disclose membership in any trade union and members are asked to consider whether they consider it prudent to do so.

5. Prohibition on members from voting on the budget when in council tax arrears. Section 106 of the Local Government Finance Act 1992.

5.1 Members are reminded that Section 106, Local Government Finance Act 1992 is still in force. This piece of legislation prohibits members from voting on the budget, council tax base or council tax levels where they are in Council tax arrears of two or more months.

5.2 Section 106 of the Local Government Finance Act 1992 applies at any time to a member of a local authority (or a member of a committee of a local authority or of a joint committee of two or more local authorities) if, at that time, a sum in respect of council tax has become payable by the member and has remained unpaid for at least two months. It effectively bars a member from voting on financial matters at any meeting of the authority, its committees or its Executive at which any of the following are considered:

(a) Any calculation required by Chapter III, IV or Part 1 of the act (i.e. budget requirement, tax base and tax);

(b) Any recommendation, resolution or other decision which might affect the making of such calculation; or

(c) The exercise of any of the functions in relation to the administration, collection or enforcement of the council tax

5.3 The member is required at the meeting to disclose that Section 106 applies to him/her as soon as practicable after the start of the meeting, and is thereafter not permitted to vote on any question with respect to such matter(s). Failure to make such a declaration followed by taking part in the vote is a criminal offence triable in the Magistrates Court which may result in a fine up to £1,000.

6. RECOMMENDED that:-

6.1 Members note the content of this report.

6.2 Members consider whether they wish to amend the Code of Conduct to expressly require Members to declare membership of trade unions.

6.3 Members note the prohibition on taking part in setting of the council tax when in arrears with their own council tax contrary to Section 106 of the Local Government Finance Act 1992.

CORPORATE MANAGER - LEGAL SERVICES & MONITORING OFFICER
Local Government (Access to Information) Act 1972 (as amended)

Background papers used in compiling this report:-

None