

BS Report - APPENDIX 2

Recommendations for changes to the Member Code (Interests)

As part of my review of Brent council's Licensing and Planning codes of practice, I was asked to consider whether changes should be recommended to the Licensing and Planning codes, to reflect the Member code requirements regarding member interests or alternatively whether it is more appropriate that the changes be made to the relevant sections of the Member code of conduct.

My recommendation is that the Member code of conduct should be amended with regard to the registration and declaration of interests.

Background

In July 2012 the council adopted a new Member code of conduct requiring members to register their Disclosable Pecuniary Interests (DPIs). The 2012 Code was adopted in accordance with the law on DPI's and following government guidance on the minimum ethical framework required by the Localism Act 2011. Members were no longer required to register other (non-pecuniary) interests, for example personal interests arising from membership of trade unions, charities or lobby groups, or relating to gifts or hospitality received.

The council's 2012 code of conduct also removed the requirement on members to declare all personal interests, other than DPIs, at meetings. Members are required by the law and by the code to declare a DPI and to withdraw from discussion and voting and from the meeting during any debate on the relevant item, unless they have obtained a dispensation. Members are not specifically required by the 2012 Member code of conduct to declare a personal interest at a meeting, or to withdraw from discussion or voting on a matter because they consider they have a prejudicial interest in it.

However, the Member code does oblige members to uphold the Seven General Principles of public life, one of which is Integrity, and it follows that members are under an obligation to limit or end their participation in any council business where their participation would amount to them using their position as a member improperly to obtain an advantage. Members have also been specifically advised of the need to end participation where there is a risk of bias or the appearance of bias as a result of any personal interest.

Each council has the discretion to decide what the Member code of conduct requires of their members regarding the registration and declaration of interests other than DPIs, further to s28(2) of the Localism Act. Some principal authorities adopted minimalist codes of conduct in 2012; other principal authorities decided to keep all or some of the requirements of the 2007 national code for the registration and/or declaration of personal (non-pecuniary) interests and prejudicial interests. Failure to declare or register those additional interests does not attract criminal sanctions in the same way as a failure to register a disclosable pecuniary interest would do.

The existing Planning and Licencing Codes and the declaration of interests at committee meetings

The council's Planning Code of Practice and Licensing Code of Practice were not amended in 2012 since they were awaiting a review more generally, which would include the interface with the main Code. Both codes currently reflect the previous legal arrangements which require members of the council who participate in Licensing or Planning matters to consider if they have a personal interest in those matters, and if so to declare it; and to consider if

their personal interest is a prejudicial interest and to withdraw from the meeting if it is. (Members who have a prejudicial interest in a matter can make Licencing Act representations to the Licensing committee, and representations as a member to the Planning Committee, but only in so far as the public also have the right to do so). The Summons for meetings also includes an agenda item at the beginning of meetings requesting that members disclose Personal and Prejudicial interests.

The Licensing and Planning codes currently omit any references to Disclosable Pecuniary Interests; in practice members of Licensing and Planning committees have been appropriately legally advised at meetings and members have declared DPis whenever required.

The minutes of 2012 and 2013 Planning Committee and Licensing Committee meetings show that, as a matter of good practice, members on the relevant committees have continued to take steps to identify and declare their own personal interests. Members have also withdrawn from discussion and voting on an item when they considered or were advised that they had a prejudicial interest. The minutes show that members have erred on the side of caution and declared their membership of relevant organisations and groups at Licensing or Planning meetings.

The minutes show members sometimes consider that they have a “personal interest” simply because they have been approached by interested parties. Interviews with a selection of Planning and Licensing committee members confirmed that members find it difficult to make a distinction between interests and “approaches”, in the absence of a definition of personal interests in the code.

A change in Government Guidance

In March and September 2013 the Department for Communities and Local Government (DCLG) issued guidance on “Openness and Transparency on Personal Interests”.

The March 2013 guidance emphasised that:-

“[Members] must act in conformity with the Seven Principles of Public Life. One of these is the principle of integrity - that 'Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. **They must declare and resolve any interests and relationships**” (my highlights).

The September 2013 guidance reiterated the duty to uphold the principle of integrity and advised members that:-

“your registration of personal interests should be guided by this duty and you should give the monitoring officer who is responsible for your council's or authority's register of members' interests any information he or she requests in order to keep that register up to date and any other information which you consider should be entered in the register.”

“All sitting councillors need to register their declarable interests – both declarable pecuniary interests, and other interests that must be declared and registered as required by your authority's code, or your duty to act in conformity with the Seven Principles of Public Life, such as your membership of any Trade Union.”

This guidance has evolved from the previous minimalist approach encouraged by DCLG in 2012. The new guidance recognises that, if there is to be public confidence in the decisions that councillors are taking, there needs to be openness and transparency about the full range of private and public interests (both pecuniary and non-pecuniary) that members can have which may give rise to a conflict of interest (or to the public perception that such a conflict exists).

Councils are now exhorted by DCLG to consider registration for, as a minimum, membership of trades unions on the basis that a councillor might be influenced by such membership; it follows that it is reasonable to consider obliging members to register their membership of organisations such as charities and lobby groups (which also exist to influence public policy) or where the particular relationship between a member and an individual or organisation might unduly influence that member's decisions as a councillor.

LGA Guidance – Probity in Planning 2013

The Local Government Association has issued updated guidance for members on "Probity in Planning". The April 2013 guidance advises that it is good practice for councils to maintain a register of member interests which includes both personal (non pecuniary) interests and DPs. The guidance advises that members should declare any personal interests at Planning meetings and that members should then consider whether that interest is "likely to be seen as prejudicing their impartiality or their ability to uphold the principles of public life". If it is, then the LGA advise that the member should withdraw from the meeting. The "prejudice" test that the LGA suggests is similar to the "prejudicial interest" test that applied nationally until 2012 which a number of local authorities retained in their own post-Localism member codes.

The LGA guidance on Planning probity is equally relevant to the work members that of the council undertake with regard to the Licensing function; both Planning and Licensing functions are quasi-judicial or formal regulatory functions where the public expect and require the highest levels of transparency and probity from members.

RECOMMENDATIONS

I recommend that the council's 2012 Member code of conduct be amended to include the requirement to register interests relating to a member's membership of (or position of control regarding) organisations such as political parties, lobby groups, and charities, or interests relating to gifts or hospitality above £50.

I recommend that the council's 2012 Member code of conduct be amended to include the definitions of personal and prejudicial interests, and should set out the impact of those on member conduct. This will require a member to declare personal interests, including registerable interests, at meetings; but the member will be able to remain in the meeting to speak and vote, unless the member's interest is a prejudicial interest or a Disclosable Pecuniary Interest.

The purpose of these amendments would be to give all members of the council, including members of the Planning and Licencing committees, greater clarity and certainty as to what may amount to a conflict of interest between their private and public interests when they participate in council business. If they consider they have a conflict of interest they are then better able to resolve that conflict. Where there is no conflict, they can remain and speak and vote and otherwise participate in council work. This approach is strong on transparency, but still allows for participation in the democratic process where the nature

of the interest is not so strong as to give rise to a conflict between that interest and the member's ability to judge and act in the public interest.

Belinda Shaw
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