

Part 9

Code of Conduct

for Members



Effective from 25 April 2019

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1. Introduction

- 1.1. The Council must promote and maintain high standards of conduct by its elected and co-opted members (its Members)¹. This Code of Conduct (the Code) helps to discharge this duty by providing the standards of conduct expected of its members when acting in their official capacity. When viewed as a whole, this Code is consistent with the following seven principles²:
- a. Selflessness
 - b. Integrity
 - c. Objectivity
 - d. Accountability
 - e. Openness
 - f. Honesty
 - g. Leadership.
- 1.2. This Code regulates the conduct of Members. It does not seek to regulate the performance, politics or policies of the Council or its individual councillors. These are matters decided by the residents at local elections.
- 1.3. All Members in Waltham Forest must comply with this Code when acting as a Councillor. Members should also take into account the Monitoring Officer's advice with regard to the bias and pre-determination in council decision-making at Appendix 1 and the criminal offences that can be committed by Members in relation to the registration and declaration of their interests as summarised at Appendix 2.
- 1.4. An allegation that a member has failed to comply with this Code will be considered in accordance with the Code of Conduct Complaints Procedure agreed by the Council.

2. Scope and interpretation

¹ Localism Act 2011, s.27(1)

² s.28(1)

2.1. This Code applies to elected or co-opted members (“Members”) of the London Borough of Waltham Forest (described in this Code as “the Council”) acting in this capacity. It does not apply to their private lives.

2.2. The following terms used in this Code are defined as follows:

A “co-opted member” is a person who is not an elected member but who is either a member of a Council committee or sub-committee or is a member of, and represents the Council on, any joint committee or joint sub-committee of the Council and is entitled to vote on any matter falling to be decided by that committee or sub-committee.

An “executive member” means the Council’s executive leader and the elected members s/he has appointed to the executive (known as the Cabinet).

A "meeting" means any meeting of:

- the full Council;
- the executive of the Council;
- any of the Council's or its executive's committees, sub-committees, joint committees, joint sub-committees or area committees.

The “Monitoring Officer” is a Council officer with statutory responsibilities under section 5 of the Local Government and Housing Act 1989 and as set out below in this Code. In Waltham Forest, the Monitoring Officer is currently the Director of Governance.

3. General Standards of Conduct

3.1. All Members must comply with the following standards when carrying out official duties:

- a. To act solely in the public interest and never improperly attempt to or actually confer an advantage or disadvantage on any person or improperly act to gain financial or other material benefits for themselves, their family, friends or close associates.
- b. Not to place themselves under a financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.
- c. To make all decisions on merit when carrying out public duties, such as making public appointments or awarding contracts.
- d. To be accountable for their decisions to the public and to co-operate fully with whatever scrutiny is appropriate to their office.
- e. To be open about their decisions and actions and the decisions and actions of their authority and Members should be prepared to give reasons for those decisions and actions.
- f. When using or authorising the use by others of the resources of this authority, ensure that such resources are not used improperly for political purposes (including party political purposes) and members must have regard to any statutory guidance made under the Local Government Act 1986.
- g. To comply with the law (including the Council's Access to Information Rules) in respect of the disclosure and confidentiality of information held by the Council and to seek advice before disclosing personal or other confidential information.
- h. To comply with the law in respect of any planning and licensing requirements, including in the case of private landlords the obtaining of licences under the Council's Selective Licensing Scheme.
- i. To treat others with respect and not to bully or harass any person.

- j. To promote the safeguarding of children and adults and responsibilities towards Children in Care.
- k. To promote and support high standards of conduct when serving in their office, particularly those set out in a. to j. above, by leadership and by example.
- l. To comply with all policies relating to equality and diversity matters, as set by the Council.
- m. To ensure that they do not discriminate directly or indirectly against anyone with a protected characteristic or treat others less or more favourably because of their gender, sexual orientation, marital status, disability, ethnic origin, religion, belief or age.

4. Registration of Pecuniary and Non-Pecuniary Interests

Overview

- 4.1. Under this Code, every Member has a duty to:
- register their pecuniary and non-pecuniary interests;
 - Declare their interests at meetings; and
 - Where a pecuniary interest is declared in respect of an agenda item or items at a meeting, to withdraw and not participate or vote in that item or items.

The Register of Interests

- 4.2. The Council's Monitoring Officer maintains a register of pecuniary and non-pecuniary interests of members (the Register).
- 4.3. Where a Member no longer has a registered interest or is no longer a Member, the Register does not need to include the Member's interests. (Any transitional period following re-election or re-appointment does not count for this purpose).
- 4.4. The Monitoring Officer may request that Members update their interests on the Register at reasonable periods and every Member must comply with such requests within 28 days or such other period agreed by the Monitoring Officer. A Member's failure to do so will initially be raised by the Monitoring Officer with the political group whip (where applicable).

Members' Duty to Register Interests

- 4.5. Every Member must notify the Monitoring Officer of their pecuniary and non-pecuniary interests (as defined in this Code) before the end of 28 days beginning with the date when s/he becomes a member of the authority.
- 4.6. Members must register the interests they have as at the date of their notification to the Monitoring Officer at 4.5 above. Past and future interests do not need to be registered, e.g. a previous or future home address or job but noting that future interests should be registered in accordance with this Code from the date they take effect, e.g. when a new job starts or the date a member moves house.

- 4.7. If a Member discloses a disclosable pecuniary or non-pecuniary interest at a meeting which is not entered on the Register and they have not already notified the Monitoring Officer of the interest, they must notify the Monitoring Officer of the interest before the end of 28 days beginning with the date of the meeting.
- 4.8. Where a member is re-elected or re-appointed, they must notify the Monitoring Officer of any pecuniary and non-pecuniary interests not already entered in the Register.
- 4.9. Where a Member has a sensitive interest, section 6 applies.

Which Interests must be registered?

Disclosable Pecuniary Interests

- 4.10. A disclosable pecuniary interest is any interest prescribed as such by regulations issued by the Secretary of State (currently the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012, the “Regulations”) and set out in Appendix 3:
and
 - a. it is either the interest of the Member;or
 - b. is the interest of their spouse or civil partner; a person with whom the Member lives with husband or wife; or a person with whom the Member lives with as if they were a civil partnerand
 - c. the Member is aware that the other person in b. has the interest.

Other Pecuniary Interests

- 4.11. The Council has power to agree that other pecuniary interests not prescribed in the Regulations must be registered by Members in accordance with this Code. Where the Council agrees other pecuniary interests must be registered, the provisions of Part 5 regarding the declaration of interests and participation and voting in meetings apply. Other Pecuniary Interests agreed by the Council are set out in Appendix 3.

Non-Pecuniary Interests

- 4.12. Non-pecuniary interests must be registered by Members in accordance with this Code, and the provisions of Part 5 regarding the declaration of interests and participation and voting in meetings apply. Non-pecuniary Interests agreed by the Council are set out in Appendix 3.

5. The Declaration of Pecuniary and Non-Pecuniary Interests at Meetings

Pecuniary Interests

- 5.1. This section applies to all pecuniary interests agreed by the Council under Section 4, subject to any dispensations granted under Section 7 of this Code.
- 5.2. Where a Member is present at a meeting (as defined in section 2.2) and
S/he has a pecuniary interest in any matter to be or being considered at the meeting and s/he is aware that this condition is met, s/he must:
- a. disclose the interest at the meeting; *and*
 - b. must withdraw from the meeting room for the relevant item, *and*
 - c. must not participate or participate further in any discussion and / or vote on the matter at the meeting.
- 5.3. In addition to the requirements in 5.2, an executive member who is individually discharging an executive function and has a pecuniary interest when discharging such a function must not take any steps or any further steps in relation to the matter except for making arrangements for the function to be discharged otherwise than by the executive member.

Non-Pecuniary Interests

- 5.4. Where a Member is present at a Meeting (as defined in section 2.2) and:
Has a non-pecuniary interest in any matter to be or being considered at the meeting and is aware that this condition is met, s/he must:
- a. disclose the interest at the meeting but may remain in the meeting and may participate in the matter and vote upon it.

- b. S/he should also take into account the guidance note at Appendix 1 on bias and pre-determination with regard to participation in meetings and seek further advice from the Monitoring Officer or another lawyer where appropriate. This advice applies particularly to planning, licensing, contractual, financial, permission or consent matters, or when the Member has been actively engaged in supporting an individual or organisation on the matter.

6. Sensitive Interests

- 6.1. Where a Member has any type of interest and the nature of the interest is such that the Member and the Monitoring Officer both consider that disclosure of the details of the interest could lead to the Member or a person connected with the Member being subjected to violence or intimidation.
- 6.2. The Register will not include details of the interest but may state that the Member has an interest about which details have been withheld.
- 6.3. Where required by this Code to declare the sensitive interest in a meeting, the Member may only declare the fact that s/he has an interest in the matter and not the nature of the interest.

7. Dispensations from the Restriction from Participating and Voting in Meetings

- 7.1. A member may apply for a dispensation from the requirement not to participate in or vote in respect of a matter at a meeting by written request to the Monitoring Officer.
- 7.2. The Monitoring Officer (or in his / her absence the Deputy Monitoring Officer) may agree the dispensation on behalf of the authority, where s/he considers, after having had regard to all relevant circumstances, the authority—
 - a. 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. 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. 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. that it is otherwise appropriate to grant a dispensation.
- 7.3. The Monitoring Officer will grant the dispensation in writing citing the ground or grounds on which it is agreed and will be published on the Council's website within 7 days of the decision.
- 7.4. The dispensation must be for a fixed time period not exceeding 4 years and will normally cover only a specific matter or meeting.

APPENDIX 1 – MONITORING OFFICER’S GUIDANCE ON BIAS AND PRE-DETERMINATION

The Council often has to make controversial decisions that affect people adversely and this can place individual councillors in a difficult position. They are expected to represent the interests of their constituents and political party and have strong views but it is also a well-established legal principle that councillors who make these decisions must not be biased nor must they have pre-determined the outcome of the decision. This is especially so in “quasi-judicial” decisions in planning and licensing committees.

This Note seeks to provide guidance on what is legally permissible and when members may participate in decisions. It should be read alongside the Code of Conduct.

Predisposition

Predisposition is lawful. The law is very clear that members may have strong views on a proposed decision, and indeed may have expressed those views in public, and still participate in a decision. This will include political views and manifesto commitments. The key issue is that the member ensures that their predisposition does not prevent them from consideration of all the other factors that are relevant to a decision, such as committee reports, supporting documents and the views of objectors. In other words, the member retains an “open mind”.

Section 25 of the Localism Act 2011 confirms this position by providing that a decision will not be unlawful because of an allegation of bias or pre-determination “*just because*” a member has done anything that would indicate what view they may take in relation to a matter relevant to a decision. However, if a member has done something more than indicate a view on a decision, this may be unlawful bias or predetermination so it is important that advice is sought where this may be the case.

Pre-determination / Bias

Pre-determination and bias are unlawful and can make a decision unlawful. Pre-determination means having a “closed mind”. In other words, a member

has made his/her mind up on a decision before considering or hearing all the relevant evidence.

Bias can also arise from a member's relationships or interests, as well as their state of mind. The Code of Conduct's requirement to declare interests and withdraw from meetings prevents most obvious forms of bias, e.g. not deciding your own planning application. However, members may also consider that a "non-pecuniary interest" under the Code also gives rise to a risk of what is called apparent bias. The legal test is: *"whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased"*.

A fair minded observer takes an objective and balanced view of the situation but Members who think that they have a relationship or interest that may raise a possibility of bias, should seek legal advice.

This is a complex area and this note should be read as general guidance only. Members who need advice on individual decisions, should contact the Monitoring Officer and / or the legal advisor for their committee.

APPENDIX 2 – MONITORING OFFICER’S GUIDANCE ON CRIMINAL OFFENCES UNDER SECTION 34 OF THE LOCALISM ACT 2011

Section 34 of the Localism Act 2011 creates criminal offences relating to councillors’ and co-opted members’ duties under the Code of Conduct. A brief guide to the offences is set out below:

Failure to Register and Declare Disclosable Pecuniary Interests (s.34(1))

A member is guilty of a criminal offence if without reasonable excuse;

- fails to register disclosable pecuniary interests in accordance with the Code **or**
- after declaring a disclosable pecuniary interest at a meeting or individual executive decision meeting fails to notify the monitoring officer to update the register **or**
- fails to disclose a disclosable pecuniary interest and /or participates in a discussion and/ or votes on an item where they have a disclosable pecuniary interest.

Providing False or Misleading Information when Registering and Declaring Disclosable Pecuniary Interests (s.34(2))

A member will be guilty of an offence if when registering and / or notifying the monitoring officer of a disclosable pecuniary interest, declaring interests at meetings (including individual executive decision making meetings), s/he either:

- provides false or misleading information and the member knows the information is false or misleading or
- is reckless as to whether the information is true and not misleading.

Prosecutions and Penalty

A prosecution will be investigated by the Police and brought by the Director of Public Prosecutions, not the Council.

If a member is convicted they may be fined up to £5000 but also may be disqualified from office for up to 5 years.

IMPORTANT NOTE

This is general guidance and should not be taken as specific legal advice about a member's individual liability in a specific set of circumstances. Members who consider they may have committed an offence should seek independent legal advice.

APPENDIX 3 – PECUNIARY AND NON-PECUNIARY INTERESTS

Introduction

This appendix sets out the pecuniary and non-pecuniary interests that **must** be registered with the Monitoring Officer and declared at meetings, as set out in Parts 4 and 5 of the Code of Conduct.

Disclosable Pecuniary Interests (see Part 4.10)

Disclosable Pecuniary Interests (DPI) are prescribed by the [Relevant Authorities \(Disclosable Pecuniary Interests\) Regulations 2012](#) as follows:

Interest	Description
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	<p>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 a member in carrying out duties as a member, or towards your election expenses.</p> <p>This includes any payment or financial benefit from a political party or group.</p> <p>This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.</p>
Contracts	<p>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—</p> <p>(a) under which goods or services are to be provided or works are to be executed; and</p> <p>(b) which has not been fully discharged.</p>
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 the member'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	<p>Any beneficial interest in securities of a body where—</p> <p>(a) that body (to the member’s knowledge) has a place of business or land in the area of the relevant authority; and</p> <p>(b) either—</p> <p>(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or</p> <p>(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.</p>

IMPORTANT NOTES:

- 1. You must disclose your own personal interests but also the interests of your spouse or civil partner, a person with whom you are living with as husband and wife or as you are civil partners.**
- 2. The criminal offences in Appendix 2 only apply to the disclosable pecuniary interests listed above.**

Definitions

The following definitions are taken from the Regulations and will assist Members in meeting their duties under this Code.

“**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;

“**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 the Member gives a notification of the interest for the purposes of section 30(1) or section 31(7), as the case may be, of the Act (*i.e. the 12 months before the Members’ notification to the Monitoring Officer of the interest*);

“relevant person” means the Member or their spouse or civil partner, a person with whom they are living with as husband and wife or as if they were civil partners, as set out in s.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.

In addition to the statutory requirements, the Council requires that members disclose the detail of all property interests that wider members of their family have within the Borough. Wider family is limited to parents, siblings and children of the Councillor.

In addition members are obliged to provide details of all persons residing at such properties of the wider family as well as details of those persons residing at properties in which the member or his/her partner has an interest. **Non-pecuniary interests (see Part 4.12)**

- Appointments made by the authority to any outside bodies (excluding joint committees with other local authorities);
- Membership of charities;
- Membership of trade unions recognised by the authority;
- Membership of lobbying or campaign groups including political parties;
- Governorships at any educational institution in the borough;
- Membership of voluntary organisations operating in the borough.

When a non-pecuniary interest has been disclosed at a meeting, the provisions of paragraph 5.4 regarding participation will apply.

These provisions apply only to the non-pecuniary interests of the Member.

APPENDIX 4 – GENERAL DISPENSATION

The authority grants a general dispensation to all councillors from the requirement to disclose any pecuniary or non-pecuniary interest and to withdraw from participation and voting on any business of the authority relating to its functions in respect of decisions about:

- (i) housing, where the councillor is a tenant of the authority provided that the decision does not relate particularly to his/her tenancy or lease;
- (ii) school meals and / or school transport and / or travelling expenses, where the councillor is a parent or guardian of a child in full time education, or is a parent governor of a school, unless it relates particularly to the school which the child attends;
- (iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where the councillor is in receipt of, or is entitled to the receipt of, such pay;
- (iv) an allowance, payment or indemnity given to members;
- (v) any ceremonial honour given to members; and
- (vi) Setting council tax or a precept under the Local Government Finance Act 1992.

The Party Whips will ensure that all councillors have applied for the general dispensation and will submit the applications to the Monitoring Officer. These dispensations will continue to the date of the annual Council Meeting following the next local elections in 2014. The Council will then review dispensations at that meeting.

APPENDIX 5 – GIFTS AND HOSPITALITY

Members must disclose in writing to the Monitoring Officer any gifts and/or hospitality with an estimated value of £25 or more **offered to them** in their capacity as a councillor, including those offers of gifts and/or hospitality which were refused. Disclosure must include the identity of the donor, whether gift or hospitality was accepted or not and any other circumstances the member considers relevant.

Disclosure must be made within **28 calendar days** of the offer.

The Monitoring Officer will maintain an online register of declaration of gifts and hospitality. Declarations will be removed from the Register 12 months after the date of the disclosure, unless the Monitoring Officer considers there are exceptional circumstances justifying the retention of a disclosure for a further period.

Members have access to certain universal discounts offered by the Council to officers and Councillors, for example, membership of the Feel Good Centre. Such universal benefits offered by the Council are not considered a gift for the purposes of this Code.