

Report title: Declaration of Interests	
Report to: Audit Governance and Standards Committee	
Report author: Paul Turner – Director, Legal and Assurance	
Date: 30 July 2018	For: Decision
Enquiries to: Paul Turner, Director, Legal and Assurance or Joanna Boaler, Head of Democracy and Transparency	
County Divisions affected: All Essex	

1. Purpose of Report

- 1.1 This report asks the Committee to review the current rules on when Members, having declared an interest, may be permitted to remain in the room.

2. Recommendations

- 2.1 That all Members of the Council are consulted on proposals to amend the constitution and the Code of Conduct so that:
- (a) Interested Members who would not be permitted to vote will continue to be required to leave the room for the duration of all discussion relating to that matter and be unable to vote.
 - (b) Members may nonetheless be present in the room for the part of that item of business if they are providing information to the committee and subsequently answering questions as part of the meeting as part of a procedure adopted by that Committee at which a member of the public would also be allowed to take part.

3. Summary of issue

- 3.1 The law about declarations of interest by Members is in the Localism Act 2011.

(a) Disclosable Pecuniary Interests (DPIs)

The law is that members who have a DPI must not vote or participate in the discussion or take any action in relation to the decision. The law says that members must leave the room if the Council's standing orders so require. ECC's constitution requires members to leave the room if they cannot vote.

(b) Code Interests

The law leaves it to each authority's code of conduct to decide whether and how Code Interests are created, although MCHLG guidance is that some types of interest (such as trade union membership) are created. At ECC we have created a type of interests which are called 'Code Interests'. If a member has a

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code interest which is 'so significant that a member of the public who knew the facts would think it was likely to prejudice the member's consideration of the public interest' then they must leave the room, but otherwise they may remain in the room and vote.

- 3.2 It will be seen that in all cases it is ECC which decides whether or not a member with an interest is permitted to remain in the room when an item is considered.
- 3.3 ECC requires all members to leave the room if they could not vote because of their interest. Whilst these rules are clear, they do not necessarily give the right flexibility and have created some practical issues. Sometimes a pragmatic interpretation has been called for in order to allow meeting to proceed, but this can leave members in an unclear position, feeling exposed and not all committees have necessarily taken the same approach.
- 3.4 Members do not always understand that, where they have an interest, they have fewer rights to attend than a member of the public – although the Court of Appeal has made it clear that this can be perfectly appropriate.
- 3.5 The rules have not been reviewed since they were created in 2012, which was part of a larger review which had to be undertaken urgently in order to implement the changes brought about by the Localism Act 2011.
- 3.6 There are four scenarios which should be considered:

Scenario 1: Members of the decision-making body sitting as such. It is clear and well embedded that members will leave the room if they have an interest which means that they cannot vote. Whilst not all authorities in Essex operate this rule, most do. If Members were permitted to remain they could be influential in the debate - arguably breaching the code of conduct by using their position as a councillor to improperly influence the decision.

Options:

- (a) Maintain the current position. Members can be influential just by being present. Members who wish to find out what is happening during a debate can listen to the recording/broadcast proceedings if a meeting is held in public.
- (b) Allow interested members to be present throughout the debate but just not allow them to vote.
- (c) Allow interested members to be present throughout the debate but require them to leave the room during the vote.

Scenario 2: Members who are not members of the committee wishing to observe meetings without taking part. In this case it could be argued that members should have the same right to attend as members of the public. However, members could be influential by their presence and if the law is that a member should have to leave the room if they are an interested member of the committee, it seems difficult to see why they should be treated differently because they are not a member of the particular committee. If we apply

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different rules to non-members of the committee then this could, at least in theory, encourage a member to be substituted for a meeting in which case the member who has been substituted would not be a member of the committee for the item and could therefore remain.

Options

- (a) Maintain the current position. As above, it can be argued that members can be influential just by being present.
- (b) Allow members with an interest who could not vote to be present throughout the debate.
- (c) Allow interested members to be present throughout the debate but require them to leave the room during the vote

Scenario 3: Interested Members who wish to address a Scrutiny committee as part of a call-in or a scrutiny review. In this case the Committee has set up procedures so that people with relevant expertise or information can provide information to the committee to inform the decision.

In many cases the person presenting will have an interest in the matter – it is frequently a person's knowledge and experience which at both gives rise to someone's interest but also means that they have information that the committee would want to know. The Committee can weigh the interest of the person speaking with the value of what they say. It does not seem unreasonable that members should be able to participate in a similar way. However, the Committee may feel that there is an additional need for safeguards to ensure that members are not present other than when they are making their contribution. Otherwise they would be able to achieve greater rights before and after they make a contribution.

Options:

- (a) Do not allow members with an interest to address scrutiny at all.
- (b) Allow members to address scrutiny but require them to leave the room after the committee has had the opportunity to question them.
- (c) Allow members to attend the relevant item but only whilst they are presenting and answering questions.
- (d) Allow members to address the committee and remain in the room.

Scenario 4: Members wishing to avail themselves of rights/privileges extended to all members or members of the public at other committees (eg public speaking at Development and Regulation Committee or public questions at Cabinet). The only difference between this scenario and scenario 3 is that at these meetings the decision will have legal effect in that the Council will, for example, be making a decision to grant (or not to grant) planning permission. However, the member would still only be permitted to participate in situation where the Council has said that members of the public or all members could participate even with an interest.

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Again, it does not seem unreasonable that members should be able to participate in a similar way to members of the public. However, there is an additional need for safeguards to ensure that members are not present other than when they are making their contribution. Otherwise members making a contribution would have greater rights during the other parts of the meeting than if they were not contributing at all, which does not appear to be fair.

Options:

- (a) Do not allow members with an interest to address meeting at all.
- (b) Allow members to address meeting but require them to leave the room after the committee has had the opportunity to question them.
- (c) Allow members to attend the relevant item but only whilst they are presenting and answering questions.
- (d) Allow members to address the committee and remain in the room throughout.

- 3.7 It is proposed that we should consult all councillors and the independent persons on proposals that would allow interested members to remain in the room only if they are providing evidence or information to a committee in circumstances that would allow members of the public to do the same.

4. Issues for consideration

4.1 Financial implications

- 4.1.1 This report has no financial implications.

4.2 Legal implications

- 4.2.1 Any changes in the current rules would require constitutional change in order to implement them. Training and guidance would be needed for all members.

5. Equality and Diversity implications

- 7.1 The Public Sector Equality Duty applies to the Council when it makes decisions. The duty requires us to have regard to the need to:
- (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc. on the grounds of a protected characteristic unlawful
 - (b) Advance equality of opportunity between people who share a protected characteristic and those who do not.
 - (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

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- 7.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, gender, and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).
- 7.3 The proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic. They will apply to all members equally and there is no evidence that members with a particular protected characteristic are more likely to have to leave the room than others.

6. List of appendices

None

7. List of Background papers

None