

Report title: Declaration of Interests	
Report to: Audit Governance and Standards Committee	
Report author: Paul Turner – Director, Legal and Assurance	
Date: 19 September 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 On 30 July the Committee decided to consult all members on a proposal to review the Code of Conduct for Members.
- 1.2 This report sets out the results of the consultation and asks the Committee to make a recommendation to Council.

2. Recommendations

- 2.1 That the Committee decides whether to recommend to Council that paragraphs 24.8.3 and 24.8.4 of the Code be amended to read as follows and that current 24.8.4 becomes 24.8.5:

24.8.3 In addition you must withdraw from the room during the consideration of an item of business and must not participate in any debate or vote on that item of business if:

- (a) you have a **Disclosable Pecuniary Interest** in that business; or*
- (b) you have a **Code interest** which is one that a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.*

24.8.4 Paragraph 24.8.3 does not apply where:

- (a) A member has received a dispensation from the Monitoring Officer or the Audit, Governance and Standards Committee; or*
- (b) A meeting is operating to a procedure which would permit a member of the public to address the committee whether on the invitation of the Chairman or otherwise, but this exemption only applies for as long as the Member is either addressing the committee or answering questions asked by any member of the committee.*

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 local authority's code of conduct to decide whether and how Code Interests are created, although Ministry of Communities Housing and Local Government (MCHLG) guidance is that some types of interest (such as trade union membership) are created. At ECC we have introduced a type of interest called 'Code Interests'. If a member has a 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 At present 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, to allow a 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 In July 2018 this Committee decided to consult members on a proposal to amend the ECC 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.

3.5 The consultation took place during August 2018. We received 17 responses, including from the leaders of all four political groups. Fourteen responses were supportive and three were opposed to any change.

3.6 The leaders of the Conservative, Liberal Democrat and Non-Aligned Group supported the proposals, as did eleven other individual members. The leader of the Labour Group stated that he had consulted the majority of members of the Labour Group who wished to retain the current position. Two individual members took a similar approach, expressing the view that:

- Members may not feel able to express a view in the presence of an interested member – however under the proposal the interested member would be required to leave the room after their participation is over, meaning that there would be plenty of scope for a frank debate to take place.
- Members may feel under pressure as to how they vote. However, the member would not be present during any vote.

3.7 Following the consultation the Committee now needs to decide on whether or not to make a recommendation to full Council to change the Code of Conduct. It appears that there is significant support for the proposals but there is also some opposition.

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

5.1 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.

5.2 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).

Declarations of Interests

- 5.3 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

Consultation responses