

INFORMATION NOTE

INTERESTS



INTERESTS AND THE CODE OF CONDUCT

The Local Government Act 2000 introduced a model code of conduct, which local authorities were required to adopt. The model code defined personal interests and personal and prejudicial interests and set out when members were required to register and declare them. The Localism Act 2011 abolished the model code of conduct and made major changes to the law about interests.

The 2011 act allowed local authorities to decide on their own local codes of conduct. However, all authorities' codes had to include mandatory provisions about disclosable pecuniary interests, which were a new category of interest defined in the 2011 act.

Fylde Council adopted a code of conduct that retained definitions and procedures associated with personal interests and personal and prejudicial interests, as well as dealing with disclosable pecuniary interests. Making recommendations on changes to the code of conduct is within the terms of reference of the Audit and Standards Committee.

This note is about what actions members must take or not take at meetings when the different kinds of interests arise. It does not deal with the requirements to register interests. For more information on the need to register interests, members should contact the Monitoring Officer.

Members should also contact the Monitoring Officer in writing for advice on specific issues relating to interests. However, this must be done at least one working day prior to the meeting concerned. Comprehensive training on interests was given to members after the 2015 borough elections.

For convenience, this note refers to personal and prejudicial interests simply as 'prejudicial interests'.

PERSONAL INTERESTS

Definition: A member has a personal interest in an item of business where (i) a decision in relation to that business might reasonably be regarded as affecting their well-being or financial position or the well-being or financial position of a member of their family or any person with whom they have a close association; or (ii) it relates to any body of which they are a member or in a position of general control or management and to which they are appointed or nominated by the council; or (iii) it relates to a body (other than another local authority) exercising functions of a public nature, any body directed to charitable purposes or any body one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union), of which they are a member or in a position of general control or management¹.

Example: A member regularly plays darts with the owner of a village store, who has applied for planning permission to install a cash machine. The committee is to consider the application.

Action: The member (whether or not they are a member of the committee) must make a verbal declaration of the existence and nature of their interest at the meeting.² They may remain in the meeting, and, if they are a member of the committee, take part in the discussion and voting.

¹ Code of Conduct, paragraph 8.1.

² Code of Conduct, paragraph 8.2(ii).

How this applies to ward councillors who are not members of the committee: A ward member who is not a member of the committee may be invited to speak by the chairman in the normal way, and would not be subject to the three-minute time limit that applies to public speakers.

PREJUDICIAL INTERESTS

Definition: A member's personal interest becomes a prejudicial interest if a member of the public with knowledge of the relevant facts would reasonably regard it as so significant that it is likely to prejudice the member's judgement of the public interest.³

Example: A member lives next door to a site which is the subject of a planning application to be considered by the committee.

Action: The member (whether or not they are a member of the committee) must make a verbal declaration of the existence and nature of their interest at the meeting. They must also withdraw from any discussion of the business at the meeting and not take part in any vote on it⁴. They may only remain in the meeting for the purpose set out in the paragraph below, and must leave the room immediately afterwards⁵.

A member with a prejudicial interest can address the committee as a public speaker, and would be subject to the same three minute time limit as other public speakers.

How this applies to ward councillors who are not members of the committee: A ward member who is not a member of the committee and who has a prejudicial interest can address the committee as a public speaker, and would be subject to the same three minute time limit as other public speakers

DISCLOSABLE PECUNIARY INTERESTS

Definition: A pecuniary interest of a member or a member's spouse or partner of one the following descriptions⁶:

<i>Subject</i>	<i>Prescribed description</i>
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	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 M in carrying out duties as a member, or towards the election expenses of M.
	This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
Contracts	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—
	(a) under which goods or services are to be provided or works are to be executed; and
	(b) which has not been fully discharged.

³ Code of Conduct, paragraph 9.1. If the business it relates to is not a planning or licensing application, the interest will not be prejudicial unless it affects the financial position of the member or the person through whom the interest arises.

⁴ Code of Conduct, paragraph 9.2.

⁵ Code of Conduct, paragraph 9.3.

⁶ Localism Act 2011, section 30; Relevant Authorities (Disclosable Pecuniary Interests) Regulations, schedule 1.

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 M'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	Any beneficial interest in securities of a body where—
	(a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and
	(b) either—
	(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or
	(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.

Example: A member owns land that is the subject of a planning application to be considered by the committee.

Action: The member (whether or not they are a member of the committee) must disclose the interest to the meeting (unless it is in their register of interests), must not participate in any discussion of the matter at the meeting and must not participate in any vote taken on the matter at the meeting.⁷ They must also leave the room.

How this applies to ward councillors who are not members of the committee: A ward member who has a disclosable pecuniary interest would be excluded from the meeting as set out above and may not address the committee.

APPEARANCE OF BIAS

For completeness, this note concludes by briefly looking at issues around appearance of bias, and its relationship with interests.

A committee decision on a planning application will be liable to be quashed by the courts if there is the appearance of bias. The test for the appearance of bias is whether a fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal (meaning the committee) was biased⁸. The apparent bias of a member of the committee can infect the whole committee, in the sense that the participation of that member can render the decision of the committee liable to be quashed.

(Members should note that the issue of appearance of bias is not concerned at all with whether there is actual bias: the issue is how it appears.)

⁷ Localism Act 2011, section 31(2), (3).

⁸ See *Porter v Magill*, [2002] 1 All E.R. 465, cited in *Kelton v Wiltshire Council*, [2015] EWHC 2853 (Admin)

Cases where the courts have quashed decisions of local authorities because of the appearance of bias have included:

A councillor who was a director of the Coop had voted refusing to renew a licence for a sex establishment next to a Coop store. If the sex establishment closed, the Coop could expand into its premises. The court held that there was apparent bias and quashed the decision of the committee⁹.

A councillor who was a director of a housing association voted on a planning application by a developer for a housing development. The association subsequently became the developer's preferred bidder for affordable housing included in the development. The court held that the councillor's participation in the meeting gave rise to an appearance of potential bias. The decision to grant planning permission was quashed.¹⁰

There is a strong overlap between interests and the appearance of bias. If a councillor participates in a decision when they should have withdrawn because of a prejudicial interest or disclosable pecuniary interest, the decision will almost always be vulnerable to challenge because of the appearance of bias. In those circumstances, officers have a responsibility to advise on the possibility of the council acting unlawfully and on what should be done to minimise that danger. Officers will continue to discharge that responsibility.

FURTHER INFORMATION AVAILABLE FROM

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⁹ R v. Chesterfield Borough Council ex parte Darker Enterprises, [1992] C.O.D. 465

¹⁰ Kelton, cited above.