



Tyne and Wear Integrated Transport Authority - Standards Committee

Meeting to be held following the conclusion of the meeting of the ITA Audit Committee on Friday 20 July 2012 in a Committee Room, Civic Centre, Newcastle upon Tyne, NE99 2BN

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REPORT FOR DECISION

DATE: 20 July 2012

SUBJECT: Localism Act 2011 – The Amended Standards Regime

REPORT OF: The Clerk and Legal Advisor and Monitoring Officer to the Authority

If confidential, please indicate and state the reason for confidentiality.

PURPOSE OF REPORT

To consider and endorse and/or comment on the attached proposed report to the Authority.

RECOMMENDATIONS

The Committee is asked to consider and endorse the attached proposed report to the Authority, subject to any comments on it which they may wish to remit to the Authority.

BACKGROUND DOCUMENTS

None

CONTACT OFFICERS

<i>name</i>	<i>email</i>	<i>phone</i>
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IMPACT ON OBJECTIVES

To support economic development and regeneration	Neutral
To address climate change	Neutral
To support safe and sustainable communities	Neutral

1	Executive Summary
	<p>Attached to this report is a proposed report to the Authority at its meeting on 26 July.</p> <p>The Committee is asked to consider and endorse the attached report, subject to any comments it may wish to remit to the Authority.</p>
2	Introduction and Background
2.1	<p>At its meeting on 31 May, the Authority considered a report from the Committee on proposed new standards arrangements following changes made by the Localism Act 2011.</p> <p>The Authority approved the proposals set out in the report. At that time, however, the Government’s Regulations defining “Disclosable Pecuniary Interests” had not been published, so the new Code of Conduct could not be finalised.</p> <p>As the Regulations are now available, the Code can be finalised and formally adopted by the Authority.</p> <p>The attached report recommends adoption of a new code of conduct in very similar format to the NE Region Code developed and supported by regional Monitoring Officers. It also deals with other outstanding issues involving appointment of the Independent Person and independent members of the new (separate) Standards and Audit Committees</p>
2.2	<p>Any comments the Committee may have on this report will be reported to the Authority meeting on 26 July.</p>



REPORT FOR DECISION

DATE: 26 July 2012
SUBJECT: Localism Act 2011 – The Amended Standards Regime
REPORT OF: The Clerk and Legal Advisor and Monitoring Officer to the Authority

If confidential, please indicate and state the reason for confidentiality.

PURPOSE OF REPORT

To agree a new Code of Conduct for Members and finalise other aspects of the new standards arrangements.

RECOMMENDATIONS

- (a) To formally adopt a new Code of Conduct (in the form set out in Appendix 1) to apply to elected members of the Authority, and any co-opted members with voting rights, to take immediate effect;
- (b) To appoint George John Clark as the Authority's Independent Person for a period of two years;
- (c) To re-appoint Anthony Atkinson, George Clark, Elizabeth Green and Mark Scrimshaw as the independent members on the Authority's Audit and Standards Committees for a further two year period to 31 May 2014;
- (d) To agree the allocation of the existing independent members allowances as proposed in paragraph 6.2 of the report.

BACKGROUND DOCUMENTS

None

CONTACT OFFICERS

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Stuart Ovens, Legal Advisor	stuart.ovens@newcastle.gov.uk	0191 2777122

IMPACT ON OBJECTIVES

To support economic development and regeneration Neutral



REPORT FOR DECISION

To address climate change

Neutral

To support safe and sustainable communities

Neutral

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1	Executive Summary
	This report follows on from that to the May meeting (minute no 12 of that date refers) and seeks to finalise the Authority’s new standards arrangements by recommending adoption of a new members’ code of conduct.
2	Introduction and Background
2.1	<p>In May, the Authority agreed new standards arrangements to operate from 1 July. However, it deferred adopting a final version of a new code of conduct, pending Government regulations to define <i>disclosable pecuniary interests</i> (“DPIs”).</p> <p>The regulations have now been published.</p> <p>The list of defined DPIs is set out in Annex 2 of the recommended code (at Appendix 1). The DPIs replicate (albeit in slightly different terms) all but three of those interests which were registerable under the old statutory code. The three exceptions are listed in Annex 3 of Appendix 1.</p>
2.2	Section 30 of the Localism Act requires members to register their DPIs. The definitions are relatively clear for registration purposes and should cause no particular difficulty in this regard.
2.3	<p>Section 31 however says that a member who at any Authority meeting “has a disclosable pecuniary interest in any matter” must not participate in any discussion or vote on that matter.</p> <p>Unfortunately, neither the Act nor the Regulations provide any criteria as to when a DPI is to be treated as sufficiently close, or connected to, an item of Authority business to preclude member participation.</p> <p>As an illustration of the problem this might cause, a member will register as a DPI any land which s/he owns in the Authority’s area e.g. his or her home. The question then is what item of Authority business is closely enough connected to, or sufficiently impacts upon, that property to preclude the member from participating in that item of business?</p> <p>No statutory test or guidance is provided to help members (or their advisors) answer that question. This is unfortunate, especially as failure to comply with section 31 is a criminal offence.</p> <p>Representations to the CLG about this have had no response to date.</p> <p>One way to address this statutory omission is for the Authority to incorporate suitable criteria in its code of conduct.</p> <p>The Monitoring Officers of the Tyne and Wear and Northumberland councils have agreed this as a sensible approach, although one or two think it preferable to publish criteria as separate guidance rather than in the code itself.</p> <p>The recommended code at Appendix 1 is the NE Region Code agreed in principle at the May meeting but revised to include not only the DPIs but also a ‘non-participation test’</p>



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	based on the prejudicial interest criteria in the old statutory code.
3	Proposals
3.1	<p>The constituent parts of the recommended Code at Appendix 1 can be explained as follows:</p> <p>Part 1 retains the general conduct requirements as agreed in May.</p> <p>Part 2 describes what interests need to be registered in the Members' Register. These comprise the DPIs as now defined by the Regulations (as listed in Annex 2) and the three other interests (in Annex 3). Together we refer to these as "registerable personal interests".</p> <p>They effectively comprise those interests which members have previously had to register although now any DPI of a member's spouse or civil partner will also have to be registered. Whilst the DPIs must be registered by law, the other three interests do not. Our recommendation is that the Authority continues to require registration of those other interests in order to retain, as far as possible, the standards of the old regime.</p> <p>It will be noted however that it is proposed the financial threshold for registerable gifts and hospitality be increased from £25 to £50 to reflect inflation since the last review.</p> <p>Part 3 defines other situations where a member may have an interest in an item of Authority business but which is unrelated to an interest which must be registered. We refer to these as 'non-registerable personal interests'. This applies a similar test as in the old code i.e. whether the well-being or financial position of the member (or a relative or close associate) will be affected by the decision to a greater extent than most other people. This concept is not part of the new statutory framework but is considered important enough to retain in our new code.</p> <p>Part 4 sets out the criteria for deciding whether a member is precluded from discussing, or voting on, any matter at an Authority meeting.</p> <p>These are the same criteria as have applied in the past to judge the existence of a prejudicial interest i.e. the registerable, or non-registerable, interest must be significant and the decision must either affect the financial position of the member or an associated person or body or arise from an application for a permission, consent or licence relating to the member or an associated person or body.</p> <p>Paragraph 18 simply replicates existing exceptions to the non-participation rules.</p>
3.2	<p>Appendix 1 is now, in substance, very similar to the old statutory code of conduct, although written and formatted in a slightly different and hopefully more accessible way.</p> <p>The main difference, of course, is that a failure without reasonable excuse to register a DPI,</p>



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	<p>or not participate in a relevant item of Authority business, will be a criminal offence.</p> <p>Strictly, the Authority cannot import, via its code, a 'non-participation' test into section 31 of the Act to have any binding legal effect. Ultimately it will be for the courts to decide the precise meaning of section 31 and whether any particular case is caught by it. However, if the Authority does adopt this test in its code and members comply with it, they should have the reassurance that no-one could reasonably argue section 31 has been contravened so as to justify a criminal prosecution. In other words, there will be a 'reasonable excuse'.</p>
3.3	<p>One aim of this exercise has been to produce a Code for the Authority which is as consistent as possible with the codes being adopted by each of its five constituent local authorities.</p> <p>The Monitoring Officers of the five councils (as well as Northumberland and Durham councils) have collaborated on developing the NE Region Code. It is believed all five councils will adopt a code in similar, if not identical, terms to that set out in Appendix 1. The main change, if any, may arise from a preference by one or two of the constituent councils to omit the non-participation test from the code itself but instead publish it as separate guidance.</p>
3.4	<p>The DCLG may in due course issue guidance on how the 'non-participation' provisions of section 31 of the Act should be interpreted. If such guidance does emerge, we may want to review our code of conduct in light of it. However in the meantime the Code at Appendix 1 is recommended to the Authority for formal adoption.</p>
4	Protocols
4.1	<p>Paragraph 6 of the new Code allows for other specified Protocols of the Authority to become part of the Code, so that a breach of any such Protocol will be a breach of the Code itself and allegations of non-compliance dealt with in the same way.</p>
4.2	<p>At present there are no such Protocols to specify in this context but it is felt useful to at least make provision for this in case any are adopted by the Authority in future.</p>
5	Independent Person
5.1	<p>In May, the Authority agreed its Chair and statutory Vice Chair should recommend a suitable candidate as the Authority's Independent Person, with preference to be given to one of the Independent Persons appointed by the lead authority. The lead authority appointed their two Independent Persons after interview of five shortlisted applicants in late June.</p> <p>Your Chair and statutory Vice Chair recommend that one of those appointees, George John Clark, be appointed as the Authority's Independent Person for an initial period of two years, with an allowance of £100 pa.</p> <p>It should perhaps be made clear that this is not the same George Clark who is referred to in</p>



	paragraph 6.1 of this report.
6	Independent Members and Chairs of Standards Committee and Audit Committee
6.1	In May, the Authority agreed to create separate Audit and Standards Committees but each comprising the same 5 elected members and 4 independent members. The terms of office of the previous four independent members expired at the end of May. All four have indicated their willingness to be re-appointed. Accordingly, it is recommended that Anthony Atkinson, George Clark, Elizabeth Green and Mark Scrimshaw be duly re-appointed as the independent members on both committees for a further two year term, to expire 31 May 2014.
6.2	The creation of the two separate committees strictly requires a division of the existing allowances for the independent members and the chair of the old joint committee, which stood at £1,013 and £2,025 respectively. After discussion with your Chair, and taking into account the anticipated workloads of the two committees, it is recommended that allowances for the Audit Committee be 75% of the previous figures with the other 25% being allocated to the Standards Committee.

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Code of Conduct for Members (Recommended)

The Tyne and Wear Integrated Transport Authority (“the Authority”) has adopted the following code which has effect from July 2012 and which sets out the conduct that is expected of elected and co-opted members of the Authority when they are acting in that capacity.

This means the code applies whenever you (a) conduct the business of the Authority (including the business of your office as an elected councillor or co-opted member) or (b) act, claim to act or give the impression you are acting as a representative of the Authority.

‘Co-opted member’ means any person who is a member of any committee or sub-committee of the Authority with a right to vote but is not one of its elected members

The code is intended to be consistent with Nolan’s Seven Principles of Public Life, and should be read in the light of those principles, namely that Authority members will act with selflessness, integrity, objectivity, accountability, openness, honesty and leadership. Those Principles are not part of this Code but are set out in full at Annex 1 for information.

Part 1 - General Conduct

1. You must treat others with respect, including Authority officers and other elected members.
2. You must not bully any person (including specifically any Authority employee) and you must not intimidate or improperly influence, or attempt to intimidate or improperly influence, any person who is involved in any complaint about any alleged breach of this code of conduct.
3. You must not do anything which compromises or is likely to compromise the impartiality of anyone who works for or on behalf of the Authority.
4. You must not conduct yourself in a manner which could reasonably be regarded as bringing the Authority, or your office as a member of the Authority, into disrepute.
5. You must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person any advantage or disadvantage.
6. You must comply with any Protocol adopted by the Authority which seeks to regulate the conduct of its elected members or co-opted members and which the Authority has specifically declared should fall within the provisions of this code of conduct and which is listed in Annex 4 to this Code.
7. When using or authorising the use by others of the resources of the Authority, you must act in accordance with the Authority’s reasonable requirements (as set out in such protocol as it may adopt from time to time for these purposes) and must ensure they are not used for party political purposes.
8. You must not prevent, or attempt to prevent, another person from gaining access to information to which they are entitled by law.

9. You must not disclose information which is given to you in confidence, or information which you believe or ought reasonably to be aware is of a confidential nature, unless:
- (a) You have the consent of a person authorised to give it; or
 - (b) You are required by law to do so; or
 - (c) The disclosure is made to a third party for the purpose of obtaining professional advice, provided that the third party agrees not to disclose the information to any other person; or
 - (d) The disclosure is reasonable and in the public interest and made in good faith.
10. Where you have been involved in making any decision by the Authority which is subsequently subject to scrutiny by an overview and scrutiny committee of the Authority, you must not take part in that scrutiny process except to the extent you may be invited by the committee to give evidence to, or otherwise assist it. In this paragraph, 'scrutiny' means the formal examination of a policy or decision previously approved or taken by or on behalf of the Authority in order to reach a view as to its merits or effectiveness.

Part 2 - Registration of Interests

11. You must register in the Authority's Register of Members Interests information about your registerable personal interests. In this code of conduct 'your registerable personal interests' means:
- (a) any 'Disclosable Pecuniary Interest' as set out in Annex 2;
or
 - (b) any other interest held by you as set out in Annex 3.

You must register information about your registerable personal interests by giving written notice to the Monitoring Officer, who maintains the Register, within 28 days of:

- your appointment as a member of the Authority; and
- any change taking place in your registerable personal interests.

(Note: Failure without reasonable excuse to register a Disclosable Pecuniary Interest is a criminal offence under section 34 Localism Act 2011 as well as being a breach of this code)

12. Where you think that disclosure of the details of any of your registerable personal interests could lead to you, or a person connected with you, being subject to violence or intimidation, the Monitoring Officer may at your request make a note on the Register that you have a personal interest, details of which are withheld.

Part 3 – Non-registerable interests

13. You will have a non-registerable personal interest when you attend a meeting of the Authority, or one of its committees or sub-committees, and you are, or ought reasonably to be, aware that a decision in relation to an item of business which is to be transacted might reasonably be regarded as affecting your well being or financial position, or the well being or financial position of a person described in paragraph 14, to a greater extent than most inhabitants of the area affected by the decision.

14. The persons referred to in paragraph 13 are:
- (a) a member of your family;
 - (b) any person with whom you have a close association;
 - (c) in relation to persons described in (a) and (b), their employer, any firm in which they are a partner, or company of which they are a director or shareholder.

(Note:

- (a) "A member of your family" means: your partner (i.e. your spouse, civil partner or anyone with whom you live in a similar capacity); your parent or parent-in-law; any child, stepchild or sibling of you or your partner; your grandparent, grandchild, aunt, uncle, nephew or niece; and the partners of any of those people.
- (b) You have a "close association" with someone if your relationship is such that a reasonable member of the public might think you would be prepared to favour or disadvantage that person when deciding a matter which affects them).

15. When you attend a meeting of the Authority, or one of its committees or sub-committees, and you are aware that you have a non-registerable interest in an item of business (as defined in paragraph 13) you must disclose that interest to the meeting before consideration of that item begins or (if later) when you become aware of the interest.

Part 4 - Non-Participation in Authority Business

16. When you attend a meeting of the Authority, or one of its committees or sub-committees, and you are aware that the criteria set out in paragraph 17 are satisfied in relation to any matter to be considered, or being considered at that meeting, you must :
- (a) Declare that fact to the meeting;
 - (b) Not participate (or further participate) in any discussion of the matter at the meeting; and
 - (c) Not participate in any vote (or further vote) taken on the matter at the meeting;
 - (d) Leave the room whilst the matter is being discussed.

17. The criteria for the purposes of paragraph 16 are that:

- (a) You have a registerable or non-registerable personal interest in the matter which is such that a member of the public knowing the relevant facts would reasonably think it so significant that it is likely to prejudice your judgement of the public interest; **and either**
- (b) The matter will affect the financial position of yourself or one of the persons or bodies referred to in paragraph 14 or in any of your register entries; **or**
- (c) The matter concerns a request for any permission, licence, consent or registration which relates to or affects any of the persons referred to in paragraph 14 or in any of your register entries.

(Note: Failure, without reasonable excuse, to comply with paragraphs 16 to 17 in relation to a Disclosable Pecuniary Interest could be a criminal offence under section 34 Localism Act 2011 as well as being a breach of this code)

18. Paragraphs 16 to 17 do not apply if (i) you have a relevant dispensation under section 33 of the Localism Act 2011 or (ii) the matter in question relates to any of the following functions of the Authority:
- (a) statutory sick pay where you are in receipt of, or entitled to receipt of, such pay;
 - (b) an allowance, payment or indemnity given to members;
 - (c) any ceremonial honour given to members; and
 - (d) setting council tax or a precept under the Local Government Finance Act 1992.

Nolan's Seven Principles of Public Life

Selflessness

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

Objectivity

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

Holders of public office should promote and support these principles by leadership and example.

Annex 2 to Code of Conduct

Disclosable Pecuniary Interests

(as defined by Regulations made by the Secretary of State under section 30 Localism Act 2011)

Please Note: The following interests are Disclosable Pecuniary Interests if they are an interest of either (a) **yourself**, or (b) **your spouse or civil partner**, or (c) **a person with whom you are living as husband and wife**, or (d) **a person with whom you are living as if you were civil partners** (all of whom are referred to as “relevant persons”):-

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 previous 12 months in respect of any expenses incurred by you in carrying out your duties as a member, or towards your election expenses. 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 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.

Land - Any beneficial interest in land which is within the area of the Authority.

Licences - Any licence (alone or jointly with others) to occupy land in the area of the Authority for a month or longer.

Corporate tenancies - Any tenancy where (to your knowledge)—

- (a) the landlord is the 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 your knowledge) has a place of business or land in the area of the 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.

Note: In the above descriptions, the following words have the following meanings –

“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;

“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.

Annex 3 to Code of Conduct

Other Registerable Personal Interests

The other interests you must register under paragraph 11(b) of the code are:

1. Any body of which you are a member (or in a position of general control or management) to which you are appointed or nominated by the Authority;
2. Any body which (i) exercises functions of a public nature or (ii) has charitable purposes or (iii) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union) of which you are a member (or in a position of general control or management);
3. Any person from whom you have received within the previous three years a gift or hospitality with an estimated value of more than £50 which is attributable to your position as an elected or co-opted member of the Authority.

Note: These mean only **your** interests and not those of your spouse or civil partner

Annex 4 to Code of Conduct

Associated Protocols

The Authority has adopted the following Protocols which are intended to regulate the conduct of its elected members or co-opted members and which the Authority has specifically declared should fall within the provisions of this code of conduct pursuant to paragraph 6 of the code:

None