

KENT COUNTY COUNCIL STANDARDS COMMITTEE

ADVICE TO MEMBERS ON THE APPLICATION OF THE CODE OF MEMBER CONDUCT

Advice Note 5

(Supersedes Advice Note 1. Agreed by the Standards Committee 30 May 2007)

REGISTERING AND DECLARING INTERESTS, GIFTS AND HOSPITALITY

A INTRODUCTION

This guide provides advice on registering and declaring interests and registering gifts and hospitality under the rules of the County Council's code of conduct. It applies to co-opted voting Members, as well as elected Members, but this guide uses the term 'Member' to refer to all types of Member. This guide also refers to the 'Monitoring Officer' because that is the officer referred to in the code, but you will find at the end of this guide details of the officers to contact if you require any advice about an interests matter.

The rules of the KCC code of conduct and the Local Government Act 2000 require you to register your interests with the Monitoring Officer (and please note that interests that you must register now include gifts and hospitality worth £25 or more that you receive in the course of your duties as a Member). You must also declare in meetings any interests you have which relate to the business of the meeting. If you are a Cabinet Member, you must declare any relevant interests when making and recording decisions.

Note that what you have to **REGISTER** is not the same as what you have to **DECLARE**. Each is discussed separately in this note.

Because their codes of conduct are based on the national Model Code and are therefore almost identical, KCC and the Kent and Medway Fire and Rescue Authority (KMFRA) have agreed that those Members of KCC who also serve on the KMFRA only need to submit one registration of interest form. This should be sent to the Head of Democratic Services at KCC who will place a copy in the Registers of Interests of both authorities.

B REGISTERING INTERESTS

1 What interests do I need to register?

You need to register any of **your own** interests that fall within the categories set out in the code of conduct. These categories cover both financial and non-financial interests and include:-

- membership of or position of control or management in:-

- other bodies where you represent KCC (*e.g. if you have been appointed or nominated by KCC as its representative on an outside body*);
 - other public bodies (*e.g. District Council, Parish Council, school governing bodies. If you have been appointed by KCC to serve on the KMFRA or the Kent Police Authority (where you serve as a member of that body, not as a representative of KCC) you would need to register this here*);
 - charities (*You have to register all charity memberships even if you are simply a subscribing member and the only activity is to receive a magazine (e.g. Kent Wildlife Trust, National Trust). You should seek advice from the officers listed at the end of this guide about how to register membership of or voting rights on charities to which you have been appointed by KCC, as opposed to the charity itself*);
 - bodies whose main purpose is to influence public opinion or policy (*this includes political parties even if you have listed your constituency party under the election expenses heading*);
- your jobs and businesses;
 - the name of your employer and partnerships, companies, etc, in which you are involved;
 - the names of people who have helped you with election expenses or expenses associated with your office, (*this includes your constituency party; you do not have to register the amount of the contribution or your expenditure; neither do you need to register any allowances or expenses you receive as a Member of KCC or any other local authority (including District Councils, the KMFRA and Kent Police Authority)*);
 - the name of any company or other corporate body which has a place of business or other property in the KCC area, in which you have a shareholding of more than £25,000 face value (*i.e. the value recorded on the share certificate, not the value at which you could sell them*) or have a stake of more than 1% of the company's issued share capital;
 - contracts for goods, services or works between you, your firm, or any company in which you have a shareholding of more than £25,000, and KCC;
 - the name of any person or body from whom you have received any gifts or hospitality worth £25 or more because of your position as a Member of KCC. *You do not need to register gifts and hospitality offered but not accepted, neither do you need to register those received in a private capacity. You may have to estimate how much a gift or hospitality is worth but it is probably better to err on the side of caution.*
There is no longer a separate Register of Gifts and Hospitality;
 - landholdings in the KCC area (*including your home*); and
 - land leased or licensed from KCC by you, your firm, or a company in which you have a shareholding of more than £25,000.

2 How do I register my interests?

If you are an existing Member, you have already registered your interests under the old code of conduct. This registration is still valid and you do not need to take any further action unless and until any of your interests change (in which case see note 4 below).

If you are a new Member you should complete a Registration of Interests form, with any interests you have that fall within the categories above. Send the signed and completed form to the Head of Democratic Services. You may find it helpful to retain a photocopy of the form for your records.

3 When do I have to register my interests?

If you are a new Member, you have 28 days to register your interests from when you are first elected or appointed to office.

4 What should I do if my interests change or I have new interests?

You should ask at the Members' Desk for a Change of Registered Interests form and send it to the Head of Democratic Services within 28 days of the change occurring.

You will also be asked to confirm or update your list of interests each year. At the same time you will be asked if there have been any contracts or other dealings with any of the authorities on which you serve relating to these interests during the last year ("related party transactions").

5 What will happen to my list of interests?

The Monitoring Officer is required by law to keep and update a register of the interests of all Members. Your Registration of Interests form will be kept in the register.

6 Will the register be made available to the public?

Yes, the register has to be open for inspection by the public at Sessions House at all reasonable hours. It is kept in The Information Point near the Members' Desk.

7 Are there any exceptions?

Yes, if you believe that the registering of any interest could put you or your family at serious risk of violence or intimidation (eg, a shareholding in a company involved in research using live animals) then you can ask the Monitoring Officer for an exemption on the grounds that it is "sensitive information".

C DECLARING INTERESTS AT MEETINGS

1 When do I need to declare my interests?

You need to declare your interests at all KCC meetings if matters to be discussed at the meeting affect those interests. The interests that need to

be declared are **wider** than those you have to register, as explained in the following paragraphs. **In particular, they include the interests of your friends and family as well as your own.**

2 What interests do I need to declare in a meeting?

You need to declare any personal or prejudicial interests which you, a friend or relative has in a matter reported to or discussed at a meeting. Friend is defined as “a person with whom you have a close association”. Relative is defined as “a member of your family”.

3 How do I know if I have a personal interest?

This is a matter of judgment for each Member.

What you have to do is to ask yourself what effect a decision on the matter would have on you, your relatives and your friends. You also need to look at the effect the decision would have on:-

- your job, employer or business and those of your relatives and friends;
- any companies in which you, a relative or friend are a director, partner or employee or where you, a relative or friend have a shareholding of more than £25,000 (face value);
- the following organisations where you, your relatives or friends hold a position of general control or management:
 - other bodies where you represent KCC;
 - other public bodies;
 - charities; and
 - bodies whose main purpose is to influence public opinion or policy.

(See note B1 above for more advice on these types of organisation)

Awareness of relatives and friends interests – The code recognises that you can only declare a personal interest where you are aware or ought reasonably to be aware of it. There is no obligation to make positive inquiries about the interests of friends and relatives, but you must declare them if you are aware of them. The closer the relationship, though, the more a reasonable observer might think you ought to be aware or have taken steps to make yourself so, eg, in the case of a spouse or partner.

If the matter would affect your well-being or financial position or that of the people or bodies listed above more than other people (defined as other council taxpayers, ratepayers, or inhabitants) in the **electoral division** affected by the decision, then **you have a personal interest**.

This means that you need to compare your interests with those of other council taxpayers, ratepayers or inhabitants of the electoral division affected by the decision to see whether you think your interest (or the interest of a relative or friend) is generally greater than the norm.

In addition, if the matter being discussed relates to the business of somebody from whom you (in your capacity as a KCC Member) have

received gifts or hospitality worth £25 or more within the last three years; or to any of the other interests you have entered in the register, then **that is also a personal interest**.

A personal interest can affect you **positively or negatively**. So, if you, a relative or friend would stand to lose by the decision, you should also declare it.

4 What do I need to do if I have a personal interest in a matter?

You must normally declare the interest and say what it is, either:

- at the start of the meeting or of the item concerned; or
- as soon as it becomes apparent in the course of debate on an item, and
- make sure the meeting Clerk has clear details of the nature of the interest you have declared so that he or she can record it in the minutes.

There are two exceptions to this:

- If your interest relates only to a body to which you were appointed by the County Council, or some other public body on which you serve, you only need to declare it if you choose to speak on the item concerned (or if your interest is also prejudicial – see notes C6-9 below).
- If your interest relates to “sensitive information” (see note B7 above), you must declare that you have an interest (and leave the room if it is also a prejudicial interest), but you do not need to say what it is.

5 Can I stay in the meeting if I have a personal interest?

Yes. You can still take part in the meeting and vote on the matter unless your personal interest is also a **prejudicial** interest. However, you cannot **chair** the meeting while the matter is being discussed (*this is forbidden by the KCC Constitution*).

6 What is a prejudicial interest?

Whether a personal interest is also a prejudicial interest is again a matter of judgement for each Member.

What you have to do is ask yourself whether a member of the public – if he or she knew all the facts – would reasonably think that your personal interest (and that includes an interest of your relatives or friends) was so significant that your decision on the matter would be affected by it. If he or she would think that your judgement would be affected, then it is likely that you have a prejudicial interest.

Members of the Policy Overview, NHS Overview and Scrutiny and Cabinet Scrutiny Committees will have a prejudicial interest if any of these committees is looking at a decision taken by another committee (including the Cabinet) of which they were a Member at the time the decision was taken.

7 What is not a prejudicial interest?

The code of conduct says that the onus is on you as a Member to decide if you have a prejudicial interest in a matter. The code also sets out some general exemptions from prejudicial interests. It says that you *may* regard yourself as not having a prejudicial interest if the matter:-

- does not affect your financial position (or the financial position of any of the people or bodies listed in note C3 above);
- does not relate to an application (eg, for planning permission) made by or directly affecting you or any of the people or bodies listed in note C3 above;

or if it relates to:-

- school meals, transport and travelling expenses if you are a parent of a child in full time education, or a parent governor of a school, unless it relates to the school that your child goes to;
- statutory sick pay where you are in receipt of, or are entitled to, such pay from KCC;
- Members' allowances and expenses or any indemnity given to Members;
- any ceremonial honour given to Members;
- setting KCC's Council Tax.

School Governing Bodies – If you serve as a school governor, whether appointed by KCC or not, you would have a prejudicial interest when issues relating to the financial position of your school, or an application by the school (eg, for planning permission) were under discussion. It is likely that you would only have a personal interest in respect of other issues relating to your school.

8 What do I need to do if I have a prejudicial interest?

If you have a prejudicial interest then you must declare what that interest is (unless it is “sensitive information” – see note B7 above) and withdraw from the meeting by leaving the room. You cannot take part in discussions on that matter with other members of KCC even outside formal meetings, and you must not try to improperly influence a decision on the matter.

9 Are there any exceptions?

Yes, there are two.

First, even if you have a prejudicial interest in a matter, you have the right to address a meeting on the matter on behalf of your constituents, provided that members of the public also have the right to address the meeting, and provided that you leave the room as soon as you have finished speaking. This would allow you to, for example, address the Planning Applications Committee on a planning application affecting your electoral division, even if the application also affected you personally.

Second, if the Cabinet Scrutiny Committee is scrutinising a decision taken by another KCC committee (including Cabinet) of which you were a Member at the time the decision was taken, you may still attend the meeting to give evidence or answer questions on the matter. This exemption is intended to assist the scrutiny process by enabling the Cabinet Scrutiny Committee to ask questions of decision-takers.

10 Can I get a dispensation?

In certain very specific circumstances, the Standards Committee can grant you a dispensation to participate in a meeting even when you have a prejudicial interest. The circumstances are where:-

- the number of Members affected at the meeting would exceed 50%; or
- the political balance would be upset.

The dispensation must be sought in writing from the Standards Committee via the Monitoring Officer before the meeting at which the matter is to be discussed takes place.

11 What if I'm a Cabinet or Lead Member?

If you are a Cabinet Member and you have an interest in an individual decision that comes before you, you must inform the Leader (who may assign the matter to another Cabinet Member) and the Monitoring Officer. If you have an interest in a matter considered at full Cabinet you should declare your interest and take no part in the discussion on the matter, leaving the room if necessary.

As a Cabinet Member you are permitted to attend meetings of Cabinet Scrutiny Committee in order to give evidence or answer questions on any decision which you or the Cabinet have taken.

If you are a Lead Member and you have an interest in an individual decision which comes before you for advice or other action you should decline to be involved and refer the matter back to the Cabinet Member

12 Where do I go if I need advice on my interests?

The flowchart on the next page has been designed to help you decide what interests you need to declare and what you must do to declare them.

If you need any further advice on registering and declaring your interests, please contact either of the following two officers:-

Geoffrey Wild, Director of Law and Governance (Monitoring Officer)
01622 694302

Stuart Ballard, Head of Democratic Services (Deputy Monitoring Officer)
01622 694002