

9. **Predetermination**
To update members on new provisions in respect of pre-determination arising from the Localism Act 2011 (attached).
10. **Place Court Residential Care Home**
To consider the response of the Chief Executive of Suffolk County Council to the Town Council's request for a meeting to discuss the future of Place Court Residential Care Home, and to determine any further action to be taken.
11. **Police Community Support Officer**
To consider funding a Police Community Support Officer for Haverhill.
12. **To Agree End of Year Transfers to/from Balances**
To agree end of year balance transfers (attached)
13. **ONE Haverhill & Haverhill Area Working Party Meetings**
To report back from the ONE Haverhill Board meeting of 14th March 2012 and the Haverhill Area Working Party meeting of 15th March 2012. This item for information only.
14. **To authorise payments.**
To authorise the following cheque lists:-

Date	Cheque Numbers	Value
21.02.12	007590 – 007606	£ 11,779.21
21.02.12	007607 – 007608	£ 70.00
28.02.12	007609 – 007626	£ 36,343.21
06.03.12	007627 – 007645	£ 7,598.08
13.03.12	007646 – 007667	£ 50,288.28

15. **To receive urgent correspondence**
16. **Closure**



Will Austin
Town Clerk

DATE: 20th March 2012

Localism Act 2011 – New Standards Arrangements

1. Introduction

The Localism Act contains new provisions to regulate parish councillors' conduct, disclosure of interests and how complaints about their conduct will be handled. The Act also introduces a range of new criminal offences in respect of the registration and disclosure of certain interests and related participation in discussions and voting at meetings. Not all of the relevant provisions in the 2011 Act are in force yet and relevant secondary legislation has not yet been made.

This note summarises the changes introduced by the 2011 Act and explains how councillors' conduct and interests will be monitored and enforced. It is anticipated that these changes will take effect on 1 July 2012.

2. New Code of Conduct

The Act provides that every council must adopt a code of conduct that is expected of members when they are acting in that capacity.

The code must:

- be consistent with the Nolan principles of conduct in public life which are selflessness, integrity, objectivity; accountability; openness; honesty; and leadership and
- include provisions which the authority considers appropriate in respect of the registration and disclosure of 'pecuniary interests' and 'interests other than pecuniary interests'.

The 2011 Act provides no definition of pecuniary or non-pecuniary interests.

The impending revocation of the current prescribed model code of conduct with mandatory provisions means that the council is free to adopt any code of conduct that it wants. A council may if it chooses adopt the code of conduct that has been adopted by its principal authority – in our case, St Edmundsbury Borough Council. SEBC is currently developing a Suffolk-wide model code, along with other principal authorities in the county, and with the Suffolk Association of Local Councils.

3. Handling of Code of Conduct Complaints.

Under the Act, the principal authority (SEBC) is responsible for investigating and deciding code of conduct complaints which relate to town and parish councillors in their area. The Act does not prescribe the arrangements for principal authorities to have in place for the investigation and determination of complaints. It is likely that most principal authorities will delegate these responsibilities to a committee. Principal authorities may also arrange for their Monitoring Officers to decide whether a code of conduct complaint that it receives merits investigation.

The Act also requires a principal authority must appoint at least one 'independent person'. The independent person must be consulted and his/her views taken into account before a principal authority takes a decision on a complaint it has decided to investigate. This person cannot be a member or officer of the principal authority or of any parish council within the principal authority's area or a close friend or relative of such person.

4. Breach of Code

If a member or co-opted member is found to have failed to comply with his/her council's code of conduct, the Act does not specify what sanctions can be imposed. The imposition of a sanction is a matter for the principal authority rather than the parish council, but, other than censuring or naming and shaming, a principal authority cannot enforce sanctions in respect of members of parish councils in their area.

The Act makes clear that a council decision is not invalidated because 'something that occurred in the process of making the decision involved a failure to comply with the code.'

5. Register of Interests

The Act requires the Monitoring Officer of the principal authority to establish and maintain a register of interests of the members and co-opted members of the parish councils in its area, although it does not define 'interests'. It is expected that the model code of conduct will incorporate a definition of both pecuniary and non-pecuniary interests.

The Town Council must publish the register of interests of its members and co-opted members on its website.

6. Disclosure of Interests upon Taking Office

The Act prescribes that a member and a co-opted member of a parish council must within 28 days of election/appointment notify the Monitoring Officer of any "disclosable pecuniary interests". Upon re-election or re-appointment, the member must also within 28 days notify the Monitoring Officer of any such interests not already included in his or her register of interests. The Secretary of State will prescribe by regulation what constitutes a "disclosable pecuniary interest". The legislation dictates that this provision will relate to a member and a co-opted member's interests **and** his/her spouse or civil partner or the person with whom he/she lives as if they were a spouse or civil partner. Failure to register a "disclosable pecuniary interest" will be a criminal offence.

A member or co-opted member of a parish council may ask the Monitoring Officer to exclude from his/her register of interests sensitive interests which may include disclosable pecuniary interests the details of which, if disclosed, might lead to a threat of violence or intimidation to him/her or to a person 'connected' with him/her.

7. Disclosure of Interests at Meetings

If a member or co-opted member of a parish council is aware that he/she has a disclosable pecuniary interest in a matter, he/she is barred from participating in any discussion or voting

on the matter at the meeting. Participation in the discussion or voting on that matter is a criminal offence.

The code of conduct that is adopted by a relevant authority including a parish council may include an obligation on members and co-opted members to disclose pecuniary and non-pecuniary interests at meetings. There is no criminal sanction for failing to disclose such interests even if disclosure is required by the authority's code of conduct.

8. Dispensations

The Act permits a member or co-opted member of a parish council with a disclosable pecuniary interest to submit a written request to the Town Clerk to participate in a discussion or vote on a matter in which he/she has a disclosable pecuniary interest. A dispensation may be granted if having had regard to all relevant circumstances, it is considered that:

- without the dispensation the number of persons prohibited from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business;
- granting the dispensation is in the interests of persons living in the authority's area;
- it is otherwise appropriate to grant a dispensation.

9. Criminal Offences

Under the Act, failure to register a disclosable pecuniary interest within 28 days of election or co-option (or re-election or re-appointment), or the provision of false or misleading information on registration, and participation in discussion and voting in a meeting on a matter in which the member or co-opted member has a disclosable pecuniary interest will be criminal offences, potentially carrying a Scale 5 fine of £5000 and/or disqualification for up to five years.

Pre-determination – Changes Arising from the Localism Act 2011

1. Introduction

The Localism Act 2011 introduced a new provision which may protect councillors if there is a challenge to the validity of the decision taken by a council because a member or co-opted member is alleged to have had a closed mind when voting.

2. Purpose and Objectives of the New Provisions

By introducing the new provisions, the Government has not attempted to change case law in respect of predetermination and bias but it has attempted to clarify it. The explanatory notes to the Act say:

‘Predetermination occurs where someone has a closed mind, with the effect that they are unable to apply their judgment fully and properly to an issue requiring a decision. Decisions made by members and co-opted members of relevant authorities later judged to have predetermined views have been quashed. [it] makes it clear that if a member or co-opted members of a relevant authority] has given a view on an issue, this does not show that [he/she] has a closed mind on that issue, so that that if [he/she] has campaigned on an issue or made public statements about their approach to an item of council business, he or she will be able to participate in discussion of that issue in the council and to vote on it if it arises in an item of council business requiring a decision.’

S. 25 of the Act provides that a member or co-opted member is not to be taken to have had a closed mind ‘just because’ they ‘had previously done anything that directly or indirectly indicated what view he/she took, or would or might take, in relation to a decision’.

3. The courts

The courts have already gone a long way in recognising that councillors need to be councillors and that not all that they think or say is necessarily what they do at the point of decision making. In *National Assembly for Wales v Condrón and another* [2006] the court recognised that there is a two stage test for pre-determination. First the behaviour complained of has to be relevant to the issue. Second the situation has to be one where a notional fair-minded and well-informed observer, looking objectively at all circumstances, would consider that there is a real risk that the decision maker has refused even to consider a relevant argument or would refuse to consider a new argument.

In both the courts and the 2011 Act there is a presumption against pre-determination by local decision makers. This is to enable democracy to work in the way it has developed. So, it is for a complainant to prove that a closed mind existed in a particular case rather than for one to be assumed by any set of circumstances.

Thus, if a member had expressed views on a particular issue but when taking the decision they had approached this with an open mind and taken account of all the relevant information, they will not have pre-determined. However, the more extreme the view

expressed by a councillor the more difficult in practice it will be to be able to get away from the impression that they would approach the decision with a closed mind.

4. Examples of what may or may not be pre-determination.

A councillor who when standing for election stated that they were against any further development in their community would not be pre-determined on a planning application just because of those statements.

- A parish councillor who is also a councillor on the local planning authority would not have pre-determined his view on a planning application to be decided by the principal authority just because the parish council had already considered and voted for or against that planning application. The important issue is that the councillor must be prepared to reconsider the planning application at principal authority level in the light of the material information and considerations presented there.
- A councillor who helped a resident to object to a new play area would not be pre-determined at a local council decision which concerns the play area just because of helping the resident.
- A councillor's pre-election campaign included opposing a proposed incinerator. After he was elected, he voted to end the negotiations to sell local council land for development of an incineration plant. There is no presumption that the councillor has pre-determined his decision because of his election campaign statements.
- A councillor's political group on a community council has a planning policy which supports housing development in the area. The councillor votes to support a new affordable housing development in the area. The policy in itself is not evidence of the councillor's bias in favour of the affordable housing scheme. When voting on a decision to support a particular planning application, the councillor would have to have regard to considerations which are specific to the application even though because of his political group's planning policy he might be predisposed to be in favour of it.

5. Summary.

In all the above examples, a council's decision will be safe from a successful legal challenge if the councillors' approach is objective and fair and they consider all the relevant and material issues.

If there is evidence of pre-determination by one or more councillors then the council decision could be subject to a successful Judicial Review as being tainted. In that case the decision could be quashed and the council would have to reconsider and re-make the decision without the pre-determination.

In practice many of such challenges come from individuals or companies that have had planning applications adversely commented upon or refused.

HAVERHILL TOWN COUNCIL

Earmarked Reserves	31-Mar-2011	Increase / (decrease) 2011/12	31-Mar-2012	
	Amount	Amount	Amount	
Election reserve	11000.00		11,000.00	
Safe Place 2 Be	1000.00		1,000.00	
Middle Schools Celebration	344.62	(47.00)	297.62	
A&L Leisure Marketing Development	2000.00		2,000.00	
A&L Leisure for Youth	4000.00		4,000.00	
A&L Leisure Development	2000.00		2,000.00	
Multiarts project	6440.00		6,440.00	
A&L Multimedia costs	14500.00	5,000.00	19,500.00	
A&L Marketing development	1000.00		1,000.00	
Technical equipment	3000.00		3,000.00	
Arts Centre Website maintenance	1000.00		1,000.00	
Environment	2250.00		2,250.00	
Grit bins	2613.12	(843.12)	1,770.00	
Town signs	4500.00	(1,115.00)	3,385.00	
Street Furniture Maintenance	1000.00	(755.60)	244.40	
Christmas lights	0.00	17,800.00	17,800.00	
Community First Youth Projects	11224.57	19,350.00	30,574.57	
Town Centre Development	25931.52		25,931.52	
Long-term maintenance provision	170553.00	40,000.00	210,553.00	
Staffing Reserve	25000.00		25,000.00	
Accessible Changing Facility	10000.00		10,000.00	
Activities for All		1,039.00	1,039.00	
Website development		2,000.00	2,000.00	
Summer decorations		5,000.00	5,000.00	
Shopmobility		2,000.00	2,000.00	
Community grants		1,400.00	1,400.00	
Arts Centre extension / High St property acquisition fund		200,000.00	200,000.00	Estimated
TOTAL	299,356.83	290,828.28	590,185.11	