A Councillor’s Guide to Interests

As a councillor you will take part in decisions which can have very significant impacts on communities, business, and residents. As a result of this, it is crucial that councillors are seen to act in a fair and honest manner. The law surrounding decision making by councillors has therefore developed a number of different tests to assess whether a councillor should be allowed to take part in making a decision.

This guide is intended to give you the basic rules surrounding each kind of interest you might have in the Council’s business, along with practical examples of when you might or might not have an interest. All councillors need to be continually aware that they may have an interest in an item and of their responsibility to act accordingly.

If you have any doubts over any aspect of this, please contact Democratic Services for advice as soon as you become aware of a potential interest. While advice can be given at meetings, seeking advice prior to a meeting is preferable to be sure thorough and informed advice can be given.
**Disclosable Pecuniary Interests**

Disclosable Pecuniary Interests (DPIs) are defined in legislation and affect all councillors. All councillors are required by law to make a written declaration of any DPIs which they or their partner have regarding certain elements of the following topics:

- Employment, office, trade, profession
- Sponsorship
- Contracts
- Land
- Licences
- Corporate tenancies
- Securities

When you become a councillor you must complete a register of interests form within 28 days listing any relevant interest. This form must be amended within 28 days following any change to these interests during your term of office.

If any of the items you have disclosed is relevant to the business you are considering as a councillor you must declare that interest to the meeting. Having declared the interest you will have to leave the room during the discussion of the item and not take part in any vote.

The failure to declare a Disclosable Pecuniary Interest can be a criminal offence leading to a prison sentence or a fine.

**Example**

Cllr Kitson is an Executive member considering a proposal to enter into a contract with one of her employer’s competitors. Cllr Kitson should declare a DPI and leave the meeting.

**Dispensations**

It is possible to apply to the Ethics & Engagement Committee for a dispensation to allow you to take part in a decision regardless of having a Disclosable Pecuniary Interest. You would still need to disclose the existence of that interest to the meeting, but could then make clear that you have a dispensation in relation to the relevant item. A number of dispensations affecting all councillors have already been agreed as follows:
<table>
<thead>
<tr>
<th>Dispensation Given</th>
<th>Expiry Date</th>
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<tbody>
<tr>
<td>In relation to the following areas of business:</td>
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<tr>
<td>• Housing, where a member is a tenant of the authority, provided that those functions do not relate particularly to the member’s tenancy or lease</td>
<td>October 2016</td>
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<tr>
<td>• Statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where a member is in receipt of, or is entitled to the receipt of, such pay</td>
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<td>• An allowance, payment or indemnity given to members</td>
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<td>• Any ceremonial honour given to members</td>
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<tr>
<td>• Setting council tax or a precept under the Local Government Finance Act 1992</td>
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<td>All members who meet the following criteria:</td>
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<tr>
<td>• The member has a disclosable pecuniary interest for any licence held (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer; <strong>and</strong></td>
<td>December 2016</td>
</tr>
<tr>
<td>• The nature of the business specifically relates to the consideration of the Council’s Medium Term Financial Strategy as a whole</td>
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<tr>
<td>All members who meet the following criteria:</td>
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<tr>
<td>• The member has a disclosable pecuniary interest for a beneficial interest in land held in the area of the authority; and</td>
<td>September 2018</td>
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<td>• The nature of the business wholly relates to the development or implementation of policies concerning houses in multiple occupation</td>
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<tr>
<td>All members who meet the following criteria:</td>
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<tr>
<td>a) the member has a disclosable pecuniary interest for any licence held (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer; <strong>and</strong></td>
<td>December 2018</td>
</tr>
<tr>
<td>b) the nature of the business specifically relates to the consideration of Central Lincolnshire Local Plan, or a plan or strategy comprising part of the Policy or Financial Framework.</td>
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Personal Interests

The content of the Council’s Member Code of Conduct is now decided by Council, rather than following a national model. Council has determined that members should declare a range of interests in addition to DPIs. These interests are called personal interests.

You have a personal interest in any business of the Council where either it relates to or is likely to affect:

(i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;

(ii) any body—

(aa) exercising functions of a public nature;

(bb) directed to charitable purposes; or

(cc) 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;

Example

Cllr Holter has a licence to occupy a Council allotment. The allotment charges are considered as part of setting the Council’s Medium Term Financial Strategy. Cllr Holter should declare her Disclosable Pecuniary Interest but explain that she will use the relevant dispensation above to take part in the vote and discussion.

Example

Cllr Joyce is a member of a local charity which the Council has been consulting. If the matter comes up in a meeting Cllr Joyce is attending he should declare a personal interest in the matter but can continue to take part in the meeting, as long as that the interest is not pecuniary.
(iii) any easement, servitude, interest or right in or over land which does not carry with it a right for you (alone or jointly with another) to occupy the land or to receive income.

You will also have a personal interest in any business of your authority:

(iv) where a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision, or

(v) it relates to or is likely to affect any of the interests you have registered as a disclosable pecuniary interest.

A relevant person is either:

(a) a member of your family or any person with whom you have a close association; or

(b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;

(c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or

(d) any body of a type described in section ii above.

Example
Cllr Bergman regularly says hello to a fellow dog walker in the park. At a Licensing Committee meeting he recognises the man as the applicant for a licence. Cllr Bergman does not have a personal interest to declare as the applicant is unlikely to be a close associate.

Where you have a personal interest in any business of your authority which relates to or is likely to affect a person described in section (i) or (ii)(aa) above you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.

Personal and Pecuniary Interests

If you have a personal interest in an item, that interest can become a pecuniary interest in the following circumstances:

- Where a member of the public with knowledge of the relevant interest would reasonably regard it as so significant that it is likely to prejudice your judgement of the public interest and where that business either:
(a) affects your financial position or the financial position of a relevant person or body; or

(b) relates to the determining of any approval, consent, licence, permission or registration in relation to you or any relevant person or body.

If you have a personal and pecuniary interest you must leave the meeting for the duration of the item and take no part in the discussion or vote.

Where you have a personal and pecuniary interest, you may attend a meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business. This right only applies if a member of the public would have the same right. You must also leave the room where the meeting is held immediately after making representations, answering questions or giving evidence. These attendance rights do not apply if you are also affected by a Disclosable Pecuniary Interest.

Gifts and Hospitality

If you receive any gifts or hospitality from any person or body (other than the Council) with a value in excess of £50 you must register this with the Monitoring Officer within 28 days. This information is then placed on a public register. You should carefully consider whether you should take part in any business relating to the person or body who has provided the gift or hospitality to you.

Scrutiny

Councillors who have taken part in reaching a particular decision should not be directly involved in scrutinising that decision and should declare that they have a conflict of interests preventing them from participating.

Example

Cllr Beckett’s best friend lives next door to a proposed firework factory. The application is being considered by the Planning Committee. Cllr Beckett should declare a personal and pecuniary interest if sitting on the Planning Committee.

Example

Cllr Grass was previously on the Executive when it decided to install a Ferris wheel on top of City Hall. Cllr Grass is now a member of the scrutiny committee examining the impact of this decision. He should therefore declare an interest in the item and take no part in scrutinising it, unless called to give evidence in relation to his previous role.
Council Tax

It can be a criminal offence for you to vote on matters relating to setting the council tax if you are in arrears with your own payments. Please seek the guidance of the Monitoring Officer if in any doubt whatsoever as to whether you may be affected.

Bias

It is possible that you might not have an interest to declare in an item but a court would still find that you were biased in making a decision because of your personal circumstances. If your personal circumstances link you closely with some business of the council so that you might find, or be perceived to find, it difficult to take an impartial decision there is a possibility that you are biased. English courts recognise three different types of bias: apparent, presumed, and actual.

- Apparent bias takes places when a fair-minded and informed observer in possession of the relevant facts about the councillor and the decision would decide that there was a real possibility that:
  - the councillor could approach a matter with a closed mind; and
  - the councillor could not give impartial consideration of the relevant matters.

- Presumed bias covers a councillor having a direct financial interest in a decision. This extends beyond the rules regarding your spouse’s Disclosable Pecuniary Interests to cover those with whom you have a close relationship.

- Actual bias occurs when a court finds evidence showing that a decision maker has actually been biased in reaching their decision.

Bias can result from:

- Hostility towards someone affected by the decision.
- Friendship with someone affected by the decision.
- Membership of a group affected by the decision.
- You or someone close to you being financially affected by the decision.
- The appearance of bias, even if no bias is actually present.
If you think you may be affected by bias or could be considered by an informed observer to be biased you should not take part in business relating to the relevant matter.
**Predetermination**

When taking a decision, councillors must be sure that they have not previously made up their mind so as to exclude the possibility of changing it.

The test for predetermination is that there must be ‘positive evidence’ that a councillor has a closed mind. Predetermination should be distinguished from having a predisposition towards taking a certain decision. The key difference is that a councillor with a predisposition towards voting a particular way is willing to change their mind while someone who has predetermined how they will vote is not willing to change their mind.

**Example**

A planning application for the development of an old people’s home is being considered. Councillor Black has previously stated his opposition to any more old people’s home in his ward. However, Councillor Black will be able to take part in the decision provided that he has not already made up his mind.

Councillors are not expected to completely avoid declaring their opinions on business in advance of a meeting. It is recognised that councillors are elected representatives and will often have expressed their views in public before reaching a decision.

However, you should always remain open to the possibility of reaching a different decision based on the evidence presented to you. It is good practice, particularly for decisions relating to Licensing and Planning Committees, to state expressly that you will consider all of the evidence presented to you before reaching a final decision.