

BRIEFING NOTE

DECLARING PERSONAL AND PREJUDICIAL INTERESTS NEW GUIDANCE FOR MEMBERS AND STAFF

Introduction

Our previous understanding of, and approach to, matters relating to the declaration of interests has been changed significantly following recent considerations by the Standards Board, and a recent Court of Appeal decision (Richardson and Orme v North Yorkshire County Council).

Previous understanding

Our previous understanding was, briefly, as follows:

1 Whenever a Member attended a meeting of the Council (including committees, sub-committees, panels, forums, etc) that was considering a matter in which the Member had a Personal Interest, the Member should disclose that interest to the meeting. Once a Personal Interest had been disclosed to the meeting, there were no further restrictions on the Member.

2 Whenever a Member attended a meeting of the Council (including committees, sub-committees, panels, forums, etc) which was considering a matter in which the Member had a Prejudicial Interest, the Member must declare that they had a Prejudicial interest and withdraw from the meeting room (unless dispensation to remain has been obtained from the Council's Standards Committee). However, this did not normally apply to scrutiny committees.

What has changed?

All of the above still applies but with one important difference: as from now any Member who has a prejudicial interest must (in the absence of dispensation from Standards Committee) now withdraw from all meetings, including meetings of committees of which the councillor is not a member. Also, a Councillor who has a Prejudicial Interest cannot attend a meeting in a personal capacity.

The Richardson case

Mr Richardson was a councillor. His ward contained a quarry. His own home was about 250 metres from the quarry. A planning application was made to the authority to extend the quarry. Mr Richardson objected. He sought to address the meeting of the authority's planning committee (of which he was not a member) which considered the application, but he was excluded from it on the grounds that the authority's Code of Conduct required him to withdraw. Planning permission was granted by a majority of one vote. Mr Richardson and another objector brought judicial review proceedings to challenge the decision, one of his complaints being his exclusion from the meeting.

His challenge failed in the High Court and at the Court of Appeal. Both held that Mr Richardson had a prejudicial interest, and that the requirement under the Code of Conduct for the Member to withdraw in such circumstances applied to all members of the authority, and not just to members of the planning committee.

The High Court Judge had held that the Code permitted a member with a prejudicial interest to attend a meeting in a personal capacity. The Court of Appeal reversed that ruling.

The general rule is that a member with a personal interest in a matter also has a prejudicial interest in that matter if the interest is one which "a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the member's judgement of the public interest."

This is a question of fact and degree, upon which there is clearly scope for disagreement. Primarily, it is a matter for each member to reach a decision on this, but there may come a point where the only rational conclusion is that a prejudicial interest exists. It was held that point had been reached in this case. Mr Richardson argued that he merely shared the personal interest of several hundred other residents who were likely to be affected by the proposed development, but the Court of Appeal held that his position was distinct on the grounds that he was one of three or four residents who lived closest to the site.

The Court considered the balance between (a) freedom of democratic representation and (b) maintaining public trust and confidence in the local democratic process. The Court considered that the government had made it sufficiently clear that the balance was to be struck in favour of the latter. Accordingly, the Court found that the code applies to all members of the authority, and not just those members who are present in a decision-making capacity as members of the planning committee.

In relation to attendance in a personal capacity, the Court of Appeal concluded that it would undermine the Code of Conduct if councillors who were required to withdraw on account of a prejudicial interest were nonetheless allowed to remain as private citizens.

New Guidance for Members and Legal & Democratic Services Staff

It is clear from the above that a Councillor can no longer remain in any meeting in respect of an issue in which they have a Prejudicial Interest even as an observer, a Ward Councillor, or a private citizen. The fact that they are not a member of that committee (etc) is of no relevance.

The main problem is going to be in deciding whether a Member has a Prejudicial Interest in a particular matter being discussed by a Committee. In the Richardson case it was fairly clear. Mr Richardson lived only 250 metres from a quarry that was the subject of a planning application to extend the quarry. Other cases will not be as clear.

If Councillors believe that they might be affected by this ruling they should seek advice (as soon as possible) from any of the following:

Richard Long	Director of Legal & Democratic Services
Chris Davies	Members' Office Manager
Maureen Braithwaite	Senior Governance Officer

Chris Davies
4 October 2004