

TOWN CLERK BRIEFING NOTE

64 CODE OF CONDUCT: PARA 12(2)

Pending receipt of guidance from NALC, earlier in the year, following adoption of the new Code of Conduct (including para 12(2)), the Council resolved to allow Members with a personal and prejudicial interest to speak to an item – preferably during any scheduled adjournment for public questions – before leaving the Chamber when the relevant agenda item was reached.

NALC has now published its view on how para 12(2) should be implemented. Thus far, only one Rother Parish is believed to have made the Standing Order changes recommended in the Legal Briefing (L11-07) – and this was with one eye on its Quality Council re-accreditation.

In places, the Legal Briefing is perhaps a little unclear; however, the principle it seeks to address is that, under para 12(2) of the Code, *Members with a personal and prejudicial interest can make representations, answer questions or give evidence only if members of the public have the same rights.*

One significant departure from the ‘norm’ – apparently not influenced by para 12(2) - is that NALC now considers that adjournments during meetings *should be incorporated into the Minutes of the meeting and that public participation form part of a council meeting in law.*

It is proposing consequently that the NALC Model Standing Orders 58 (RTC SO 57) and 70 (RTC SO 68) be replaced with new Standing Orders 70A and 70B (*see page 5*) – which, in the case of RTC, would be 68A and 68B.

3.12.07

10/08/07

**PUBLIC PARTICIPATION SESSIONS AT PARISH COUNCIL MEETINGS
AND PARAGRAPH 12 (2) OF THE REVISED MODEL CODE OF CONDUCT
(CONTAINED IN THE LOCAL AUTHORITIES
(MODEL CODE OF CONDUCT) ORDER 2007)**

Introduction

Under the former model code of conduct for parish councils (contained in the Parish Council's (Model Code of Conduct) Order 2001-SI 2001/3576), a councillor with a prejudicial interest in a matter being considered at a meeting of the council was required to withdraw from the council meeting room as soon as the interest became apparent. In effect, the former Model Code penalised councillors from making representations or statements in respect of business in which they had an interest purely because of their status as councillors. Paragraph 12 (2) of the revised Model Code (contained in the Local Authorities (Model Code of Conduct) Order 2007-SI 2007/1159) permits councillors to make representations, answer questions or give evidence at a council meeting even though they have a prejudicial interest. However, paragraph 12 (2) gives councillors with a prejudicial interest this right only if members of the public have the same rights to make representations, answer questions or give evidence at a council meeting.

NALC has received several enquiries as to how paragraph 12 (2) of the revised Model Code of Conduct will work in practice and we anticipate many parish councillors are keen to benefit from the new rights of participation that they did not have the option of under the former model code of conduct for parish councils.

As paragraph 12 (2) is not a mandatory provision for parish councils, they have a **discretion** to adopt it. As advised in Legal Briefing L07-07 dated 13 April 2007, parish councils wishing to adopt it, need to pass a resolution adopting the revised Model Code of Conduct expressly including paragraph 12 (2).

Paragraph 12 of the Local Authorities (Model Code of Conduct) Order 2007 (SI 2007/1159) states:-

- (1) Subject to sub-paragraph (2), where [a councillor] ha[s] a prejudicial interest in any business of [his/her] authority –**
 - (a) [he/she] must withdraw from the room or chamber where a meeting considering the business is being held –**
 - (i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;**

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- (ii) **in any other case, whenever it becomes apparent that the business is being considered at that meeting;**
unless [he/she] ha[s] obtained a dispensation from [his/her] authority's standards committee;
- (b) [a councillor] must not exercise executive functions in relation to that business;
and
- (c) [a councillor] must not seek improperly to influence a decision about that business
- (2) Where [a councillor] ha[s] a prejudicial interest in any business of [his/her] authority, [he/she] may attend a meeting (including a meeting of the overview and scrutiny committee of [his/her] authority or of a sub-committee of such a committee) **but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.**

To ensure full compliance with paragraph 12, it is important that a councillor with a prejudicial interest in an item of business who has made his/her representations, answered questions or given evidence in relation to the same at a council meeting, **immediately** withdraws from the room or chamber at which the matter is being considered and voted on by the council. Failure to leave the room may lead to an allegation that the councillor has sought to improperly influence a decision in which they had a prejudicial interest.

NALC's current model standing orders in respect of public participation at council meetings

Currently, all parish councils (including committee) meetings must be open to the public to attend unless they are excluded by resolution because publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for other special reasons stated in the resolution (s.1 Public Bodies (Admission to Meetings) Act 1960).

Notice of the business to be transacted at a parish council meeting is delivered to councillors, by way of agenda, in advance of the meeting and is duly determined by those councillors present and voting at the meeting (schedule 12 of the Local Government Act 1972). Although councillors present at a council meeting discuss/debate matters before making a decision on the matter, there is no statutory or common law right for the public to comment on, influence or participate in the council's decision making meeting **unless permitted by the Council**. As such there is no automatic unconditional right in law for the public to speak at or make representations etc to the council at their meetings.

NALC recognises that it is long standing and indeed good practice for parish councils to allow the public to engage with members of the Council on matters of interest to them. There is varying practice within the sector regarding public participation sessions which can take place at the start or end of or midway through a meeting. At the other end of the spectrum, some

parish councils do not engage with the public present at their meetings and therefore do not entertain any form of public participation session.

We note parish councils have varying views and practice as to the status of the public participation session. Some parish councils:-

- (i) do not keep any record of public participation sessions or
- (ii) if they do, they are kept separately from the official minutes of the meeting or
- (iii) they regard the public participation session as part of the formal council meeting and a record of the session is incorporated within the council meeting minutes.

For the parish councils who operate a public participation session, Model Standing Order 70 contained in NALC's Standing Orders and Chairmanship Booklet (2003) provides:-

"At all meetings of the Council, the Chairman may at his discretion, and at a convenient time in the transaction of a business, **adjourn** the meeting so as to allow any members of the public to address the meeting in relation to the business to be transacted."

Although the wording of Model Standing Order 70 indicates that the public may comment on items of business on the agenda for that council meeting, and councillors may make statements, answer questions etc, the Council makes no decisions in respect of agenda items of business at this time because the meeting is "adjourned". It is not clear to what extent parish councils are influenced by comments made by the public during the public participation session when they come to voting on and determining that business. In most circumstances, it is difficult to see how the Council would be able to ignore statements/representations made in respect of agenda business during the public participation session. It may be appropriate for the matters/comments arising from the public participation session to be agenda for the next council meeting or relevant committee meeting which would also evidence the importance and influence of exchanges made during the public participation session. The council may also agree that they will respond in writing to oral or written questions arising from the public participation session.

It is clear from the wording of Model Standing Order 70, that public participation sessions have, until now, been regarded by NALC as **not** forming part of the council meeting. However, there is no doubt that the members of a parish council when present at a public participation session are attending **in their official capacity**. As such, councillors would of course be subject to the Code of Conduct. This is confirmed by paragraph 2(1) Local Authorities (Model Code of Conduct) Order (SI 2007/1159) which provides that councillors must comply with the Code whenever they:-

- a. conduct the business of their authority (which, in this Code, includes the business of the office to which they are elected or appointed); or
- b. act, claim to act or give the impression they are acting as a representative of their authority

Despite the wording of Model Standing Order 70, and its inference that the public participation session is not a formal part of the parish council meeting, NALC is **now** of the view that:-

- a public participation session, whenever it takes place in relation to the parish council meeting, would **not** occur unless a meeting of the council had been lawfully convened in the first place. Also, taking into account that councillors have been summoned to be present, their level of participation and engagement with the

In some exceptional circumstances (for example, where the business of the authority is the performance of the relevant officer), it would not be appropriate to send a letter to that officer. In such cases, the letter may be directed to the officer's manager or, where there is no officer more senior, the chair of the council. As in the case above, the letter should also be submitted in his/her private capacity and disclose the existence and nature of the interest arising from the councillor's official capacity

Application of new Model Standing Order 70B

If the parish council's fixed period (e.g. 15 minutes) does not provide sufficient time to allow all the members of the public and councillors with prejudicial interests with an opportunity to make representations, answer questions or give evidence, the council would have to decide who amongst the members of the public and councillors they hear from. NALC recommends that a parish council should not favour councillors over members of the public or vice versa. Although the council may not be able to hear all the representations that are being offered pursuant to paragraph 12 (2), NALC suggests, as a matter of good practice, that the council hear within the designated period, equally from both the public and councillors with a prejudicial interest.

It is quite conceivable that a parish council may not want participation by members of the public or councillors with a prejudicial interest on **all** council business. If this was the case, a parish council could restrict this enhanced level of participation to very local, controversial, or topical council business.

Common areas of interest to members of the public and councillors with a particular interest or expertise in may include the village hall, recreational facilities, environmental or planning matters. Planning matters including a parish council's formal response to a planning application in their area and formation of policies etc can be contentious and may merit a council hearing representations from different perspectives. On planning matters, a parish council could extend the duration of the paragraph 12(2) session and or/ the time allocated to each person wishing to speak during it. In very exceptional circumstances, for example when a council is dealing with an extremely contentious matter, in which contributions from members of the public and councillors with a prejudicial interest in it are too numerous or complex to be effectively dealt with or considered within the timeframe normally allotted, the Council may want to convene an extraordinary meeting to deal with that business. This would provide the Council with a more lengthy opportunity to hear and consider the representations which both the public and councillors with a prejudicial interest wish to make on a matter.

This briefing was issued by Meera Tharmarajah, Solicitor and Head of Legal Services