

Anything to declare? Understanding interests

Considerations for answers to scenarios

Scenario 1

Paragraph 8(1)(a)(i) concerns a personal and registrable interest in relation to membership of, or general control or management in, any body to which a member is appointed or nominated by the authority. Councillor Warnock therefore has a personal interest in relation to being a governor. He would also need to consider if he had a personal interest under paragraph 8(1)(b) but none of the facts would indicate if there was.

However, his personal interest is only likely to be prejudicial if three conditions are satisfied:

1. The matter does not fall within one of the six exempt categories – i.e. those listed in paragraph 10(2)(c). There is no exemption here that he can claim.
2. The matter affects the financial interests of the school or the councillor – although there is little information about how the closure might affect the councillor's own financial position, it more than likely affects the direct financial position of the school by reason of the proposed closure and the consequences.
3. A member of the public, who knows the relevant facts, would reasonably think the personal interest is so significant that it is likely to prejudice the councillor's judgement of the public interest. This is an objective test – the proposal to close that particular school is likely to meet this test, as opposed to, for example, considering a proposal to review school provision across the council's area due to falling numbers.

The fact that the council has appointed Cllr Warnock as a governor does not of itself affect whether or not his interest is personal or prejudicial.

On the basis he had a prejudicial interest, Cllr Warnock should only have addressed the meeting for the purpose of making representations, answering questions or giving evidence if members of the public were allowed to do so (even if they did not take up this right).

Once he had addressed the meeting he should have left the room and took no part in the rest of the meeting, including any debate, and should not have voted.

The fact that Cllr Warnock was appointed by the council as governor does, however, have one important effect. If he had only had a personal interest (for example, a general review of falling school numbers) and it was not prejudicial, he would only have had to disclose his personal interest if he addressed the meeting.

If he remained silent there would have been no need to disclose the personal interest and of course he could vote.

Scenario 2

If no personal interest exists then a prejudicial interest cannot exist.

Cllr Neal may potentially have a personal interest if either the lobby group comes into a category that requires registration under paragraph 8(1)(a), or the business relating to the wind farm affects the well-being or financial position of himself or what are called relevant persons under paragraph 8(1)(b), which could include the lobby group.

It is possible that the lobby group is a registrable interest because it comes within paragraph 8(1)(a)(ii)(cc) – i.e. it may be a body one of whose principal purposes includes the influence of public opinion or policy – but this is not always the case with lobby groups.

However, the business must relate to or be likely to affect issues which a group have lobbied or campaigned on, but if there is no group in existence and a member has only lobbied or campaigned as an individual, then no personal interest arises in relation to groups which should be registered.

If there is no group he will still have to consider if a personal interest arises as a result of the well-being and financial test in paragraph 8(1)(b).

On the facts presented, is there anything to indicate that the matter relating to the wind farm or lobby group would affect the well-being or financial position of the lobby group or the councillor or any other relevant person?

It is therefore likely that a personal interest arises.

If there was a personal interest, the tests for the existence of a prejudicial interest should consider the following:

1. Is there anything to suggest that the business affects the financial position of the lobby group or any other person; for example, is any land affected by the application owned by Cllr Neal or a family member?
2. Is there anything to suggest that this application relates to a licensing or regulatory matter affecting the lobby group, the councillor or any other relevant person such as a family member?
3. If there was a financial or regulatory matter would this be so significant as to prejudice his judgement of the public interest? If so, a prejudicial interest arises.

On the facts presented, there is nothing to suggest that a prejudicial interest arises under the Code. If there was a prejudicial interest, the rules on participation at the meeting would come into play (i.e. he can only make

representations, give evidence and answer questions but he must then leave the room and not vote).

Scenario 3

Part A

In terms of personal interests which are registrable, Cllr Park has a personal interest as a member of NDC. This is because NDC owns the land, which is the subject of the planning application that is being considered by SPC, and NDC is a body that he must register under paragraph 8(1)(a)(ii)(aa).

It is possible that the local steering group is a body that requires registration under paragraph 8(1)(a)(ii)(cc) as a body whose purpose is to influence public opinion. Does he have a registrable interest in relation to the local football team? Consider whether this position comes within the category of “any person or body who employs or has appointed you” under paragraph 8(1)(a)(iv). Does this cover voluntary positions?

Cllr Park also needs to consider the well-being and financial positions of any of his interests in terms of paragraph 8(1)(b). There may be an interest in relation to the cousin’s land whether as a family member, which has a wide meaning or a close association.

A relevant person under this paragraph could possibly include any of the bodies or groups he is involved with but he also needs to consider the effect of this paragraph on his involvement with any of those bodies if they are not registrable under paragraph 8(1)(a). There is likely to be a personal interest in this situation at the very least because of his membership of NDC.

In so far as prejudicial interests are concerned, there is more likely to be one that not. This is so even though the SPC are not actually determining the planning application – the item of business “relates” to the determination of a planning application because it is a consultation on it.

If the item of business was about considering prior proposals as opposed to the application itself, then the position may be different. The financial position of the football team may be affected if they have to use another site. The financial position of the cousin is affected and the financial position and regulatory position concern the NDC.

Finally, having established a financial position/regulatory position, the final test is applied: would a member of the public with knowledge of the relevant facts reasonably regard the interest as so significant that it is likely to prejudice Cllr Park’s judgement of the public interest?

In terms of advice about the meeting, Cllr Park will have to disclose personal and prejudicial interests but can address the meeting in a limited way (i.e. make representations, answer questions and give evidence, provided

members of the public can do likewise). But he must then leave the room and cannot vote. In order for him to participate where he has a prejudicial interest, the parish council must have done two things: adopted the relevant provision of the Model Code allowing participation and have standing orders or a constitution which allows the public to speak at meetings.

He needs to be aware of particular issues affecting his cousin. He only has to disclose his cousin's interests if he is aware of them or ought reasonably to be aware of them. On balance he may know enough to make some enquiries but will his enquiries put him in a position of having to disclose confidential information?

Part B

Cllr Park does not have any interests arising out of his membership of NDC when he is at the planning committee meeting. However, because he is a member of NDC, his other possible interests are relevant for disclosure and participation (i.e. membership of SPC, the steering group, the football club and his cousin). Even though he is not a member of the planning committee, he is still a member of NDC.

If he only has a personal interest (which is unlikely), he can address the meeting and stay in the room. If he has a prejudicial interest, he can only take part in a limited way as above for the SPC meeting and must leave the meeting. Even if he decided not to say anything and he had a prejudicial interest, he could still not stay in the room as some aspects of the Richardson decision in the Court of Appeal still survive. As a member of NDC he could be seen to be trying to improperly influence a decision if he remained.

Scenario 4

In so far as paragraph 8(1)(a) is concerned, there do not seem to be any registrable interests which would affect Smith and Jones, except maybe the properties they own in the vicinity of the park. Their role in the campaign does not seem to amount to membership of a lobbying group (i.e. one that has as its principle purpose the influence of public opinion). There seems to be no personal interest arising out of this aspect.

They may have a personal interest because they live close to the park. In considering paragraph 8(1)(b) is it reasonable to regard the proposals as affecting the well-being or financial position of either Smith or Jones? Are they both affected to the same extent?

There is a new and important limitation in applying the well-being/financial position test. Will a decision affect either Smith or Jones to a greater extent than the inhabitants, rate payers or tax payers of the parish council area?

In so far as the park is concerned, it could be argued that the facility affects everyone the same – it is available for use by everyone so any improvement

or local changes are likely to be the same for everyone unless any particular aspect affects Smith or Jones more than anyone else.

The situation regarding Jones is less clear than Smith. Do the noise and parking really affect his property or living in that property? Jones may not want a car park to be built but is that really about his well-being or financial position?

The local campaign does not create an interest under the Code. Would Jones be affected by the lack of any residents' parking scheme in the proposals or the alternative car park proposal? What is the meeting likely to consider in the consultation response?

Smith, on the other hand, may well be affected by the traffic noise and parking as much or more than Jones, but does a car park opposite his home affect him more in terms of well-being or financial position? Depending on the facts, they may have a personal interest because of proximity and the possibilities that could come out of the consultation either supporting the DC proposal or asking for alternative proposals.

At the start of the meeting there is a possibility that either could disclose a personal interest based on what the DC are suggesting. Even if neither considers at the start that they have a personal interest, the debate may discuss or consider other matters which affect them more than the whole parish area and they need to keep open the possibility that they may need to disclose a personal interest at a later point in the meeting.

Neither are likely to have a prejudicial interest based on a regulatory position because these are only prior proposals and do not relate to the actual planning application stage, which will come later. Either may have a prejudicial interest to consider arising out of a financial position being affected (for example, property prices/values) but what are the facts that would support this?

Even a residents' parking scheme may have financial consequences amounting to a prejudicial interest if it came up in debate, but again these are only prior proposals and not the actual traffic measures needed.

Even if a financial position (or indeed regulatory position) were supported by facts, would it pass the test of being so significant that a member of the public knowing all the facts would think it likely to prejudice a member's judgement of the public interest?

If there was a prejudicial interest then in order for Smith and Jones to take part in the meeting the parish council would need to adopt the participation provisions in the Model Code and include the right for the public to speak at meetings in their procedures.