

APPENDIX 3



Graham Creer analyses the decision by the Department for Communities and Local Government to require councillors to disclose trade union interests.

Despite his intolerance for the politics of the 1980s, Communities and Local Government Secretary Eric Pickles, and his CLG colleagues, have unaccountably revived union bashing.

Earlier in the year, he advised local authorities to cut back facility time for employees who are trade union officers. An attempt to ban the automatic deduction of union subscriptions from civil servants' pay has just been quashed by the High Court. Now Local Government Minister Brandon Lewis has circulated amended guidance on the registration and declaration of members' interests, highlighting the issue of trade union membership.

In *Guys and Dolls*, Big Julie shoots craps with a pair of blank dice. A polite query is answered by one of his henchmen: "Big Julie knows where the spots used to be". We are becoming used to this approach to member conduct.

Chapter 7 of Part 1 of the Localism Act 2011 does not, unlike the old legislation, empower the Secretary of State to issue statutory guidance, so none of the Minister's pronouncements has the force of law.

The legal requirement is in The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012, which list the "disclosable pecuniary interests" which elected members must place on the public register, or declare at meetings. They include "Sponsorship ... any payment or provision of any other financial benefit ... in respect of any expenses incurred by [a member] in carrying out duties as a member, or towards [the member's] election expenses. The Regulations then say "This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992."

The interest is the sponsorship - the payment or financial benefit - not the membership of the trades union. Some councillors are sponsored by trades unions, but many are ordinary union members, and receive no financial support.

Of course, many local authorities adopted codes of conduct which incorporated elements of the old Model Code, abolished by the Localism Act. These codes often require members to register and declare other interests, in addition to disclosable pecuniary interests, commonly including "membership of any body one of whose principal purposes includes the influence of public opinion or policy, including a political party or trades union". But this is the "old centralist code" condemned by government. Ironically, members of those authorities that adopted the minimalist codes recommended by CLG minister Bob Neil, or by the LGA, will search in vain for an explicit duty to declare trade union membership, and will now be in some difficulty.

The new Guidance draws attention to the seven statutory principles of public life, and in particular to the principle of integrity. According to the Guidance, this says "Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships."

This does not, however, imply a duty to declare trade union membership. A trade union member is not "under an obligation" to act in a particular way because of his or her membership, nor is any influence that a union might seek to exercise – by briefing for example – necessarily "inappropriate". Also, the wording of the seven principles does not appear in the Localism Act, just the word "integrity". The wording quoted in the Guidance is different from that of the equivalent "Nolan" principle, and from that of the Relevant Authorities (General Principles) Order 2001, now repealed. So there is no magic in this particular form of words, and it has no legal resonance.

The new Guidance then says "All sitting councillors need to register their declarable interests – both declarable pecuniary interests, and other interests that must be declared and registered as required by your authority's code, or your duty to act in conformity with the Seven Principles of Public Life, **such as your membership of any Trade Union.**" But this cannot mean that the legislation obliges you to register or declare trade union membership, if you do not receive sponsorship, because it simply does not have that effect.

It is always fun to look at the CLG press release that accompanies these homilies.

“Local Government Minister Brandon Lewis announced today (20 September 2013) new rules to increase town hall transparency by producing guidance requiring councillors to register trade union affiliations and dealings.” There are no new rules.

“Government guidance on openness and transparency of a councillor’s personal interests has been revised to include specifically registering union memberships. In addition a council’s own code of conduct, guided by the 7 principles of public life, should now specify a requirement to register personal trade union interests.” There is nothing in the guidance telling local authorities – those that adopted the Bob Neil CLG Code, for example – to change their codes, except that the CLG “illustrative text” has been changed. Even if there had been, this is the “should” of exhortation, not of obligation.

Local Government Minister Brandon Lewis said: “For too long residents have been kept in the dark about what union affiliations their councillors hold.” The legal obligation to disclose sponsorship has been around since 1992. There was an explicit obligation to register trade union membership from 2001 until the Localism Act abolished the Model Code.

“All councillors should disclose all their personal and financial interests on a public register, including registering union interests. Given the public debate about ‘facility time’ and ‘pilgrims’ in local government, it’s vital that conflicts of interest are avoided. These transparency reforms will give local people the confidence that their councillors are putting residents’ interests before their own.” This is the nub of it. Having swept away the “bureaucratic and controversial Standards Board regime”, including the duty to adopt a code containing detailed rules on non-pecuniary interests, the government now finds it politically expedient to pretend that it can reintroduce one of those rules by ministerial diktat. Big Julie would be impressed.

So what should local authorities and their monitoring officers now do? Those that hung on to the old version of the code, despite government criticism, can relax. The others are in a bit of a fix.

Should they change their codes, because of the press release? If they do, they will have to insert a specific requirement to register trade union membership in a document which is otherwise couched in entirely general terms. The CLG text is attached to the Guidance,

amended to do something along those lines.

Whether or not they change their code, the monitoring officer will have to advise members whether they need to register or declare trade union membership before participating in a debate about trade union facilities, to comply with the general principle of integrity. This will depend on the wording in the code. The LGA Code says “I will ... address the statutory principles ... by ... “exercising independent judgement and not compromising my position by placing myself under obligations to outside organisations who might seek to influence the way I perform my duties as a member ...”. Note that word “obligation” again. This will not bite on trades union membership unless a new duty is inserted.

The CLG Code now says “You must declare any private interests, **including your membership of any Trade Union**

, both pecuniary and non-pecuniary, that relate to your public duties and must take steps to resolve any conflicts arising in a way that protects the public interest, including registering and declaring interests in a manner conforming with the procedures set out in the box below”. The box contains a description of the statutory obligation to register and declare disclosable pecuniary interests, but also says “In addition, you must ... notify your authority’s monitoring officer of any disclosable pecuniary or non-pecuniary interest which your authority has decided should be included on the register”. This goes round in circles, though, because section 28 of the Localism Act says that any such requirements should be included in the Code. The first bit is odd. If you are a trade union member, and that membership “relates to” your duties as a councillor, then you have to declare an interest. As the Code does not say that you have to register it, you have to make an oral declaration at the meeting. Then, if there is a conflict of interest, you have to resolve it in some unspecified way. To be fair, this would have the effect of making a trade union member declare his or her membership at a meeting dealing with facilities for trade union officials. What else it might do is unclear.

And, in all these contexts, monitoring officers may want to think about membership of other lobbying groups, like the CBI, political parties, and charities, which does not currently need to be registered under the LGA or CLG codes. A member of Unison may be affected by a proposal to reduce facility time, because of the effect on Unison. If so, an ordinary member of a charity should likewise be obliged to declare an interest in any commercial dealings with that charity. But a member of, say, EQUITY, or the Rugby Players Association, would be less affected. Their connection with the subject matter is essentially conceptual. Does a member of one cricket club have to declare an interest in a decision to grant a lease to a different one? And is the integrity principle only engaged if there is a direct financial impact on the organisation, or would a member of the National Trust or the Campaign to Protect Rural England need to declare an interest in a debate on green belt development? And so on.

If the Monitoring Officer takes a narrow view, he or she will be flying in the face of the guidance. Otherwise, logically we will start to stray into the world of “gold plated” advice, and Brandon Lewis’s own caustic comment “Whether because of excessive caution, bureaucrats’ love of bureaucracy for its own sake, or a misplaced belief that they and not members should be in the driving seat on standards, officers often advise that something more or less akin to the old Standards Board regime should be continued.”

The old conduct regime was disliked and discredited because it tried to draw fine distinctions to resolve issues like this, but, by singling out trade union membership, Big Julie may have reopened Pandora’s box.

[Graeme Creer](#) is a consultant at [Weightmans LLP](#) . He can be contacted on 0151 243 9834 or by [email](#) .