

Full Council Meeting 16/2/23

Agenda Item 14: Standing Order 14d

- a) To **review** the Code of Conduct complaint regarding Councillor Beggerow.
- b) To **consider** if any course of action should be taken against Councillor Beggerow.

From 22nd July 2022 Hadleigh Town Council adopted the new LGA Code of Conduct. As this new Code of Conduct was very different to the previous Suffolk Code of Conduct Councillor Beggerow asked me for advice on whether he should declare an interest in Hadleigh United Football Club.

Advice was sought from SALC and the response was:

User Wendy Brame Thu Aug 04 2022

Non Registrable Interest

My query relates to Councillor Beggerow.

He is the Treasurer for Hadleigh United Football Club (HUFC) and although HUFC have their own land with pitches and club house they also hire the pitches at our sports ground.

We are currently making plans for development at the sports ground and at all times Councillor Beggerow has declared his involvement with HUFC as a non-pecuniary interest as they will be making use of the new facilities (if built) at the sports ground. (Prior to the current Projects Officer taking this project on Councillor Beggerow was heavily involved in the starting of this project as he was the Chair of the sports ground sub-committee, in more recent times he has not been as involved)

Under the new code of conduct it says that if you have a non-registrable interest you should not take part in the discussion or vote and must not remain in the room. But it then goes on to mention whether the matter being discussed affects the financial interest or well being of a non-registrable interest and if it does not then you can take part in the discussion and vote.

Please could you advise whether Councillor Beggerow being a Treasurer for HUFC would be a non-registrable interest?

If it is please could you confirm that he would have to leave the room if the financial interest or well being of that interest is greater than the majority of the inhabitants within Hadleigh (But could speak in the public forum section)?

With regard to bias and predetermination the guidance on the LGA COC mentions legal challenge if it is found that a Councillor who took part in a vote has bias and/or predetermination and that the decision could be found unlawful. Do you know of any cases where this has actually happened?

I have concerns around the vote for this major project and if it could be proven there was bias and predetermination the decision could be overturned. Is it better to err on the side of caution?

Any other advice on this matter would be much appreciated.
Thank you

Priority

Standard

Stage

Closed

Category

Code of conduct

Created

Thu Aug 04 2022

Updated

Fri Aug 05 2022

Confidential

No

Reply from the SALC team

It does not fit the definition of an 'Other Registerable Interest', indeed it wasn't a 'non-pecuniary interest' under the old Suffolk Code. Therefore, he can only have a 'Non-Registerable Interest' if:-

- # it directly relates to his, or a relative's or close associate's personal financial interests or well-being. OR
- # it affects his, or a relative's or close associate's personal financial interests or well-being.

These might apply if, for example, his children are playing members of the Football Club.

If the council business only affects the interest then he would have to disclose, but the Public Interest Test to as set out in the Code would need to be applied to see if his involvement would be restricted (see paras 7 & 8 of LGA Code).

If so, then he has to leave the room etc. unless the Council granted a dispensation.

There are references to bias and pre-determination cases in the LGA GUIDANCE on the Code. It is always best to err on the side of caution, if in doubt I would refer this to the Monitorign Officer.

Advice was then sought from the Monitoring Officer (screenshots of SALC advice removed from email as they are as shown above and to avoid duplication):

From: Town Clerk <townclerk@hadleightowncouncil.gov.uk>
Sent: 09 August 2022 12:30
To: Emily Yule <Emily.Yule@babergmidsuffolk.gov.uk>
Subject: Interests and Bias & Predetermination

EXTERNAL EMAIL: Don't click any links or open attachments unless you trust the sender and know the content is safe. Click [here](#) for more information or help from Suffolk IT

Good Afternoon Emily,

I hope you enjoyed your time off and are suitably refreshed.

I raised a query with SALC regarding Councillor Beggerow and have included screenshots of my question and the answer from SALC below.

Please could I ask you for your comments on all the questions especially the bias and predetermination question and also any other advice on this matter?

(I have some Councillors who are already querying Councillor Beggerow's involvement with this project and they are such leading questions that I can only assume a Code of Conduct will be made regardless of what he does)

Many Thanks

Wendy Brame
Town Clerk
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From: Emily Yule <Emily.Yule@baberghmidsuffolk.gov.uk>
Sent: 15 August 2022 17:53
To: Town Clerk <townclerk@hadleightowncouncil.gov.uk>
Subject: RE: Interests and Bias & Predetermination

Hi Wendy,

Sorry for not being able to get back to you sooner on this. It is always very difficult to advise on interests, and particularly predetermination and bias, because ultimately it is for the Councillor to make their own judgement as to whether or not they are impacted. We can give them advice but it is their decision.

The LGA guidance has some useful information about predetermination and bias
<https://www.local.gov.uk/publications/guidance-local-government-association-model-councillor-code-conduct#bias-and-predetermination>

I think it is also worth considering the difference between being 'predisposed' and being 'predetermined'. A councillor can be predisposed to a matter (for example if they are the person proposing a motion, they of course are fundamentally going to be in support of it) without being predetermined so long as they are willing to listen to all the arguments and approach the issue with an open mind. I think it is important to remember that councillors are allowed to have a view or can support something without automatically being predetermined.

With regards to the new categories of interests, if Cllr Beggerow has been appointed by HTC to be on the football club he will have an ORI. If it is a personal activity, then he may have an ORI if the football club is registered as a charity. If both of those are ruled out then he will need to consider if he has an NRI by virtue of any relatives or close associates being impacted by HTC decisions about the football club, as per the SALC guidance below.

I always advise councillors to err on the side of caution and if there is any chance that they might have an interest, or for a reasonable person to believe that they would have an interest, it is better to not participate.

Kind regards,

Emily

Emily Yule
Director – Law, Governance & Regulatory Services and Monitoring Officer

Babergh and Mid Suffolk District Councils - Working Together

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Councillor Beggerow interpreted this advice as him not needing to declare an interest and subsequently read out a statement at the Full Council meeting in August to this effect.

A Code of Conduct complaint was made against Councillor Beggerow and the letter advising of the outcome is below:



Your Ref 2022-Sept -0003

Councillor Conduct Complaint

Sent via email

Date 4th November 2022

Dear Councillor Beggerow,

COUNCILLOR CODE OF CONDUCT COMPLAINT

Following receipt of a Councillor Code of Conduct Complaint form, I have made an initial assessment of the concerns that were raised that you may have failed to declare an interest at a number of council meetings where the Layham Road Sports Ground was being discussed due to being a Treasurer and Member of Hadleigh Town Football Club.

On reflection my view is that this complaint is upheld at this time.

My reasoning is based on the following points: -

- a) The Localism Act 2011 requires all relevant authorities to adopt a Code of Conduct dealing with the conduct that is expected of members when they are acting in their capacity as a Councillor. The allegations made against you concern your conduct as a Town Councillor and as such I am satisfied that the allegations against you fall within the scope of the Code of Conduct.
- b) The advice that was sent relating to declaration of other registrable interests and non-registrable interests from the Monitoring Officer and SALC was correct.

Under the grounds of non-registrable interests, you should consider the nature of your relationships with relatives or close associates. The guidance states that a close associate is one that you are in regular contact with over a period of time. Whilst the football club is the mainstay, I would suggest that you would be in close contact with members of the football club on a regular basis and that a member of the public might reasonably think you were prepared to favour the club when discussing a matter that affects them.



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I have therefore reached the conclusion that you do have a non- registrable interest. As the matter affects Hadleigh Town Football Club more than the majority of people in the area and that a member of the public knowing all the facts would reasonably believe that it would affect your judgement of the wider public interest, you should not have remained in the room whilst matters relating to the Hadleigh Town Football Club were discussed.

Sanction

I have taken into account that the new Suffolk Code of Conduct has only recently been adopted. With that in mind I am recommending that further Code of Conduct training is undertaken as soon as possible.

The Council will also need to review all of the decisions when you remained in the room when matters relating to the football club were discussed.

I have consulted with the Council's Independent Person who has confirmed that they agree with my assessment.

There is no right of appeal against these decisions and accordingly, the complaint file is now closed.

If you are not satisfied with this assessment, you can contact the Ombudsman via the link below:

<https://www.lgo.org.uk/make-a-complaint/fact-sheets/other-topics/complaints-about-standards-and-member-conduct>

Although they do not offer a right of appeal against the Council's decision on such complaints, they can consider if there has been any fault in the way the Monitoring Officer considered the complaint.

Yours Sincerely



Deputy Monitoring Officer



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As this decision seemed at odds with the advice previously received and I believed it would have implications for all Councillors I asked SALC for further advice. This advice was sought from their Standards Adviser (who also co-wrote the LGA Code of Conduct). This is below:

From: Town Clerk <townclerk@hadleightowncouncil.gov.uk>

Sent: 17 January 2023 17:27

To: Jim Friend SALC [REDACTED]

Subject: Advice Required - Code of Conduct Issue

Good Afternoon Jim,

Following a recent Code of Conduct investigation I would like to seek clarity on the circumstances around other registrable and non-registrable interests.

Please could I ask for advice on the following scenarios:

1. A Councillor is a Treasurer for a local football club (hereafter referred to as FC). This FC is located on an area of land which is leased from the Town Council, they have their own pitches and club house on this land. If an agenda item specifically mentions the FC then an other registrable interest would be declared and he would leave the room.

Recently we have been discussing a 3G pitch and pavilion to be sited on other land that we own, this land is a sports field with tennis courts and pitches which are currently hired out to local clubs such as the tennis club, rugby club and the FC as and when required. All agenda items are about progressing the project and what the design should look like.

This Councillor does not have a close association with anyone from the FC he does not socialise with anyone or see anyone outside of committee meetings and match days.

This position is voluntary and he has been on the Committee for a number of years, he was not elected by the Town Council and the FC are not a charity.

What interest, if anything, would he need to declare?

2. A number of Councillors are members of an environmental group (hereafter referred to as EG), only 1 is a committee member (and she declares an other registrable interest and leaves the room), the rest are just general members so they attend meetings, attend organised events and receive the regular newsletters. None of these members declare any interest at any meeting where the EG is discussed whether that is related to grant applications.

What interest, if any, should they be declaring?

3. If we are discussing the Play Areas we own such as having new equipment would Councillors have to declare an interest in the following situations and what interest would that be:

They take their children/grandchildren to that play area regularly.

They have a friend with children/grandchildren who use the play area regularly.

They live near the Play Area but don't use it.

4. If we are discussing an event within the Town and agreeing expenditure should Councillors declare an interest in this if they are intending to come to the event with their family and friends? I'm thinking specifically about events that might be aimed at a certain demographic such as an event for children – this would only affect certain Councillors with children/grandchildren or their close associates with children/grandchildren.

What interest, if any, should they be declaring?

Is there more guidance on close associate and ultimately who decides whether someone is a close associate?

Also wellbeing seems to encompass so much and every decision we make affects people's wellbeing – how in depth does the wellbeing element go?

Any help on all of this would be much appreciated.

Wendy Brame

Town Clerk

Hadleigh Town Council

Market Place, Hadleigh, Suffolk, IP7 5DN

Tel (01473) 823884

From: Jim Friend SALC [REDACTED]
Sent: 19 January 2023 16:39
To: Town Clerk <townclerk@hadleightowncouncil.gov.uk>
Subject: RE: Advice Required - Code of Conduct Issue

Dear Wendy,

I sent your questions off to our Standards Advisers, Hoey Ainscough Associates for their advice. They were the actual architects of the LGA Model Councillor Code of Conduct, and we used them for our briefing sessions last year on the new Code. The response is as follows:-

Obviously I need to caveat my responses to these specific examples by saying this is not legal advice and it is ultimately up to the courts to interpret matters. And my advice is based on the examples as presented so there may be other additional factors which would change my advice – for example the councillor may also be related to an applicant or something.

Before commenting on the example, just to reiterate the principles.

There are a series of questions that the clerk would need to go through in giving advice:

- a) Does the matter **directly relate to** the member (or the body or person with whom they are closely associated)? For example, it is their own application. In that case there is a clear conflict and they should not take part. However, the examples below are more on the 2nd point?
- b) If it does not directly relate to them, is the member (or someone associated etc) in some way affected? If they are not affected at all there is clearly no interest. But if they are in some way affected, then further questions need to be asked, which is
- c) Are they affected more than the majority of people in the area of the parish? Most development, for example, will affect everyone in some way in a small community so you have to ask to what extent are they affected? Is it more than the ordinary person? If it is next door for example they clearly are? And
- d) If they are more affected would a reasonable member of the public think that is likely to cloud their judgment? This is the test used by courts for bias (sometimes called the Clapham Omnibus test) – the public are much more likely to think you would be biased in say a regulatory matter or awarding of funding than a general policy debate on an issue.

Obviously matters (where they are not obvious such as a) need to be looked at on a case-by-case basis.

Using those 4 questions above my initial thoughts on the examples are:

1. *A Councillor is a Treasurer for a local football club (hereafter referred to as FC). This FC is located on an area of land which is leased from the Town Council, they have their own pitches and club house on this land. If an agenda item specifically mentions the FC then an other registrable interest would be declared and he would leave the room. Recently we have been discussing a 3G pitch and pavilion to be sited on other land that we own, this land is a sports field with tennis courts and pitches which are currently hired out to local clubs such as the tennis club, rugby club and the FC as and when required. All agenda items are about progressing the project and what the design should look like. This Councillor does not have a close association with anyone from the FC he does not socialise with anyone or see anyone outside of committee meetings and match days. This position is voluntary and he has been on the Committee for a number of years, he was not elected by the Town Council and the FC are not a charity. What interest, if anything, would he need to declare?*

Question a) clearly does not apply as it does not directly relate to the councillor nor to the football club – they are not themselves applying for funding to build the pitch as I understand it. So, the question is to what extent are they affected (b-d). Clearly the football club is affected in some way as it will get access to an all-weather pitch (particularly important this time of year as I know from my own daughter's football training!) but I would say they are no more affected than the majority of the community. It will be a facility in theory available to all in the community and of benefit to the community as a whole. There may be some cost to the football club of hiring out the facility but I do not see that that would pass the tests at c) and certainly not at d) so I see no interest based on those facts. The member may of course wish for transparency to record his role at the meeting but it certainly should not affect his participation.

2. *A number of Councillors are members of an environmental group (hereafter referred to as EG), only 1 is a committee member (and she declares an other registrable interest and leaves the room), the rest are just general members so they attend meetings, attend organised events and receive the regular newsletters. None of these members declare any*

*interest at any meeting where the EG is discussed whether that is related to grant applications .
What interest, if any, should they be declaring?*

This will depend on a number of factors. I obviously don't know specifically what the environmental group is nor its stated aims so that may make a difference – for example they are actively campaigning on a particular issue (save the village pond or what have you). Where environmental matters generally are being discussed there is clearly nothing to declare. They are no more affected than anyone else by the need to consider the environment. Equally where something more specific is being discussed which may in some way be in line with the group's general aims I do not believe there would be any interest. For example, campaigning to reduce emissions would not preclude you from taking part in a discussion on cycle lanes even though that would clearly help to reduce emissions – again it is something which would affect the community equally. Where it is specifically related to the aims of the group – as I say save the village pond and the Council is debating selling off the land – there would be a conflict (and issues of predetermination would arise). In those narrow circumstances there would almost certainly be an interest (arising from b to d above) and they should not take part but they may want to seek specific advice from say the Monitoring Officer should those circumstances arise. Where it comes to applying for grants or funding I would say there is a clear conflict and they should not be taking part as that clearly relates directly to the organisation (a as above). For example, there are likely to be other organisations bidding for funding and it would be unfair to allow people from one organisation to have a vote on how any pot is distributed.

3. *If we are discussing the Play Areas we own such as having new equipment would Councillors have to declare an interest in the following situations and what interest would that be:
They take their children/grandchildren to that play area regularly.
They have a friend with children/grandchildren who use the play area regularly.
They live near the Play Area but don't use it.*

I would say no in all these cases. Again, looking at c) above in particular the facilities are for all the community so even though you may have children/grandchildren that does not of itself give you an interest over and above the rest of the community – the majority for whom presumably have children/grandchildren and even those without children can still sue the facilities (for visiting nieces, nephews for example!).

The only caveat may be the last example – people living nearby. Whether they use it or not is irrelevant. It is unlikely they would have an interest but see wider comments on wellbeing below. If, say, they lived next door and there was going to be 6 months of constant drilling then they may have an interest because of the temporary impact that might have on them, or if the new equipment included say a swing which went so high that children could see over the fence into their garden again that may affect their wellbeing. But it is very unlikely and simply say replacing a bit of equipment over a day or two would not be sufficient to engage the test any more than anybody making repairs to their house and putting temporary scaffolding up, for example, might do.

4. *If we are discussing an event within the Town and agreeing expenditure should Councillors declare an interest in this if they are intending to come to the event with their family and friends? I'm thinking specifically about events that might be aimed at a certain demographic such as an event for children – this would only affect certain Councillors with children/grandchildren or their close associates with children/grandchildren.
What interest, if any, should they be declaring?*

Again, on the face of it probably not, although each event may need to be looked at separately applying the criteria above. But in general, it would strike me that the events would be for the benefit of the community as a whole. In the example cited for example, as with above, they are not benefitting more than the majority of people. If it was a particularly niche event then there may be some interest that would be engaged but I can't think of a specific example at the moment.

In general, the principle is that councillors are democratically elected to represent their communities and to take decisions on their behalf. So, they should only be excluded from taking part where they (or people close to them) are clearly going to benefit or be disadvantaged more than the community as a whole and those circumstances in my experience tend to be fairly limited.

The clerk asks in particular about 'wellbeing' and 'close associate'.

As you may know we have recently produced for NALC and SLCC guidance on the model Code for the parish sector, drawing on the guidance we wrote for the LGA. This guidance defines both those terms as follows:

What does "affecting well-being" mean?

The term 'well-being' can be described as a condition of contentedness and happiness. Anything that could affect your quality of life or that of someone you are closely associated with, either positively or negatively, is likely to affect your well-being. There

may, for example, be circumstances where any financial impact of a decision may be minimal but nevertheless the disruption it may cause to you or those close to you could be significant. This could be on either a temporary or permanent basis. Temporary roadworks in your street may affect your well-being on a temporary basis. Closure of a local amenity may have a more permanent impact on your well-being if you use it more than the majority of people in the area.

What are the definitions of relative or close associate?

The Code does not attempt to define "relative" or "close associate", as all families vary. Some people may have very close extended families, but others will have more distant relations. You should consider the nature of your relationship with the person (e.g. whether they are a close family member or more distant relation). The key test is whether the interest might be objectively regarded by a member of the public, acting reasonably, as potentially affecting your responsibilities as a councillor. It would be a person with whom you are in either regular or irregular contact with over a period of time who is more than an acquaintance. It is someone a reasonable member of the public might think you would be prepared to favour or disadvantage when discussing a matter that affects them. It may be a friend, a colleague, a business associate or someone whom you know through general social contacts. A close associate may also be somebody to whom you are known to show animosity as you might equally be viewed as willing to treat them differently.

The whole of the guidance is available at this link and goes through interests in some detail, looking at similar scenarios as the above.

<https://www.nalc.gov.uk/our-work/civility-and-respect-project#code-of-conduct-supporting-guidance>

I hope that is helpful but as ever happy to discuss further.

Best wishes



Hoey Ainscough Associates Ltd

I hope this helps to clarify the Code and its application.

Regards,
Jim

Jim Friend | Advice Manager | Email: [Redacted]

Suffolk Association of Local Councils, Units 1 & 2, Hill View Business Park, Old Ipswich Road, Claydon, Ipswich IP6 0AJ

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From: Town Clerk <townclerk@hadleightowncouncil.gov.uk>

Sent: 23 January 2023 17:40

To: Jim Friend SALC <dceo@salc.org.uk>

Subject: RE: Advice Required - Code of Conduct Issue

Good Afternoon Jim,

I am sorry to be a pain but wonder if I could have further clarification on question 1.

In the business plan for funders of the 3g pitch/pavilion it was predicted that the football club would use the pitch for 68% of the time, followed by the rugby club and other groups. Although this was the prediction the reality could be different as bookings are made on a first come, first served basis as it is now (for the grass pitches) and is available to the whole community still. Would this change the advice below?

Also are we able to share the advice with Councillors as this is going to be discussed at a meeting? If we are able to share are we able to name the person or can we just say Standards Advisers or should we just say this advice is via SALC?

Many Thanks for all your help on this matter.

Wendy Brame
Town Clerk

From: Jim Friend SALC <dceo@salc.org.uk>

Sent: 24 January 2023 09:16

To: [REDACTED]

Subject: FW: Advice Required - Code of Conduct Issue

Good morning [REDACTED]

Please see the below additional information on one of the scenarios, your further comment would be very much appreciated.

Regards,
Jim

Jim Friend | Advice Manager | Email: jim.friend@salc.org.uk

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From: Jim Friend SALC [REDACTED]
Sent: 27 January 2023 12:48
To: Town Clerk <townclerk@hadleightowncouncil.gov.uk>
Subject: FW: Advice Required - Code of Conduct Issue

Good afternoon Wendy,

I have received the below response to your supplementary question.

Hope this assists.

Regards,
Jim

Jim Friend | Advice Manager | Email: [REDACTED]
Suffolk Association of Local Councils, Units 1 & 2, Hill View Business Park, Old Ipswich Road, Claydon, Ipswich IP6 0AJ

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From: [REDACTED]
Sent: 27 January 2023 12:13
To: Jim Friend SALC [REDACTED]
Subject: RE: Advice Required - Code of Conduct Issue

Hi Jim

Apologies for delay but I've been working away for the last 3 days so have had very little radio contact!

I don't think it does change our advice – it is still it seems to me for the benefit of the community as a whole.

I'm happy for advice to be shared and to be 'named' or for you to say advice is from SALC as best suits your purposes!

The recommendation from the Deputy Monitoring Officer was that Councillor Beggerow attend Code of Conduct training which he will do later this month and also that the Council need to review all of the decisions when Councillor Beggerow remained in the room when matters relating to the football club were discussed.

Councillors are asked to review the Code of Conduct complaint regarding Councillor Beggerow taking in to account all the information above. Councillors should also consider The Localism Act 2011 S.28 (4) which states - A failure to comply with a relevant authority's code of conduct is not to be dealt with otherwise than in accordance with arrangements made under subsection (6); in particular, a decision is not invalidated just because something that occurred in the process of making the decision involved a failure to comply with the code.

NALC LTN 80 (attached), paragraph 18 also gives advice regarding this - S.28 (4) confirms that a council decision is not invalidated because 'something that occurred in the process of making the decision involved a failure to comply with the code.'

Councillors must decide whether the Town Council should review all the decisions when Councillor Beggerow remained in the room when matters relating to the football club were discussed. If this is agreed these decisions will be brought to a forthcoming meeting.

Councillors must also decide what course of action, if any, to take against Councillor Beggerow as per Standing Order 14d.