

Declaration of Interest, Gifts, & Use of Services

- 1 Members of staff, and of the Management Committee, shall:
 - (a) at meetings disclose an interest on an item under discussion whether of a pecuniary or non-pecuniary nature as defined in the NFHA Code of Conduct, under the appropriate agenda item;
 - (b) not accept gifts, other than those of a trivial nature, or receive extravagant entertainment, and will report the details of any gifts or entertainment received to the next meeting which they attend, under the appropriate agenda item;
 - (c) not gain any special advantage by virtue of working for or being a Management Committee member of the Association, if they use the services of a consultant, contractor, professional adviser or other individual or firm that also works for the Association. When a member of staff or of the Management Committee uses the services of any such body or individual, the arrangement should be declared to the Secretary, preferably before the transaction takes place. If the Secretary is affected, he or she should declare his or her interest to the Chairman. Staff and members of the Management Committee should make it clear to such bodies or individuals they might use that they will not accept undercharging or the work being done free and that any work done will be reported to the Management Committee in accordance with the Association's Policy and Procedures Guide.

Declarations under (a), (b) and (c) shall be minuted, and those in relation to (a) will be discussed by the meeting with a view to deciding and minuting whether the member should withdraw from, or remain in, the meeting, vote or refrain from voting on the item to which the declaration relates. The minutes of declarations and decisions taken in relation to them shall be notified to the Association's Secretary and recorded in the Association's Register of Interest, Gifts and Use of Services.

- 2 Staff and tenant members of the Management Committee may purchase goods at any shop with which the Association has discount arrangements, with a letter of authorisation signed by the Accountant and Secretary.
- 3 Staff may use the Association's office and other equipment for personal use according to terms and procedures recommended to the Committee by the Workers Executive Committee, approved by the Committee and notified to the Association's Secretary for recording to the Association's Register of Interests, Gifts and Use of Services.

- 4 New members of staff, and of the Management Committee, shall, within two weeks of their appointment, notify the Association's Secretary of any interest they have, in accordance with 1 above.
- 5 A Member of the Management Committee shall resign from the Committee if she or he has any professional, personal or business interest relating to the work of the Association which directly or indirectly has continuing personal advantage, other than the member's status as a tenant.
- 6 The Association's Secretary shall table the Register of Interest, Gifts and Use of Services at each meeting of the Management Committee.

WHAT IS DUALITY OF INTEREST?

All Committee Members and employees have a duty to understand and comply with certain rules concerning their outside interests, receiving of gifts, use of services, and claiming of expenses. The following summary is based on a reading of the Housing Corporation's guidance paper, "Payments & Benefits".

The Basic Rule

The rules are statutory, arising from Section 15 of the Housing Associations Act 1985 as amended by the Housing Act 1988. The text of Section 15 (as amended) is attached as Appendix I.

The purpose of Section 15 is to control payments and benefits to:

committee members, officers and staff;
their close relatives;
businesses they own or manage.

Controls remain for 12 months after resignation. "Close Relative" normally includes a person's *spouse, parent, grandparent, child, grandchild* (including illegitimate children and grandchildren), *brother and sister*. Technically, the term "relative" does not include any relationship that is not by blood or marriage, however close. However, where such close relationships do exist associations are strongly advised to act as though Section 15 did in fact apply.

A "benefit" includes but is not confined to:

- (a) the grant of a *tenancy* or licence;
- (b) the *sale of property* (except under the Right to Buy)
- (c) *contract of employment*
- (d) *commercial contract*, e.g. building or professional services

Please note there is no choice in complying with this statute. Breaches are not made acceptable by 'declaring an interest'; they are simply forbidden. However there are exemptions which this paper explains later.

A few Examples and Clarifications

The payment of Committee Members' expenses must be limited to meeting *actual out-of-pocket expenses*. Payments to babysitters are lawful so long as they relate to actual expenses incurred. Subsistence and travelling allowances may be paid if they are in line with public sector equivalents. Anything that amounts to a payment for attendance or services is forbidden, including payment for loss of earnings. Payments should only be made on the authority of the Chair and/or Secretary.

Loans are prohibited unless expressly provided for in the contract of employment (e.g. car loan).

Severance payments may not include any "ex gratia" element unless a claim for unfair or wrongful dismissal is likely to succeed. Solicitors should draft the terms of such a payment and the Housing Corporation should be informed.

Leaving presents should be paid for by a collection from those wishing to contribute.

Housing and Employment *application forms should include a question* on whether the applicant falls within Section 15.

Exemptions

Section 15 contains within it a list of exceptions to the rule it is enacting, and the final one of these delegates some discretion to the Housing Corporation. In effect this discretion allows the HC to add to the list of exceptions. The HC-sponsored exceptions ("Exemptions") are explained in Appendix II, though the full legally binding text is not included with this Paper.

In the case of these Exemptions the payment or benefit requires the Management Committee's approval, or that of a duly empowered sub-committee. If it involves a Committee Member that person must leave the meeting during discussion, and it appears that the Committee does not have the usual option of inviting them to remain. The Committee does not have to agree to the payment or benefit if it does not want to.

If the Committee is satisfied that the payment or benefit would be permitted under one of the Exemptions and wishes to proceed with it, their decision must be recorded both in the minutes and in a special Register which is available for public inspection. It must also be reported to the HC.

Solon has a public Register (separate from the standard 'Declarations of Interest, Gifts, and Use of Services' Register), which so far has one entry.

Non-Statutory Dualities

Outside the scope of Section 15, there are other safeguards that housing associations should employ. The following list is based on guidance in the HC's Performance Audit Visit Manual.

Interests

A Register of Interests should be kept for each individual Committee Member. (In Solon, Members are asked to fill out a form.)

Members of meetings should disclose all direct or indirect financial or other *interests which could influence judgement* on any item on the Agenda. Having done so, they should leave the meeting for that item unless specifically asked to remain; if asked to remain they should not take part in the discussion (though it is probably acceptable for them to answer direct questions) and they should not vote. In the case of the Management Committee, any declarations of interest must be reported in the HAR10 annual return to the HC.

Under the Association's Rules, if a Committee Member fails to declare an interest before discussion they may be voted off the Committee.

Gifts

A Register of Gifts and Hospitality received should be maintained.

In principle, *gifts should not be accepted, and both giving and receiving hospitality should be kept to a minimum.*

Use of Services

Preferably, *no-one should use the services of an individual or firm who also works for the association.* When this is unavoidable, the arrangement should be declared and recorded in advance.

In Solon, any declarations concerning these three areas are recorded firstly in the minutes and secondly in the 'Declarations of Interest, Gifts, & Use of Services' Register.

APPENDIX I

TEXT OF SECTION 15

1 A registered association which is also registered under the Industrial and Provident Societies Act 1965 may not make a payment or grant a benefit to:-

- (a) a committee member (including a co-opted member), officer or employee of the association, or
- (b) a person who has held such a position within the previous twelve months, or
- (c) a close relative of a person within (a) or (b) above, or
- (d) a business trading for profit of which a person falling with (a), (b) or (c) above is a principal proprietor or in whose management such a person is directly concerned;

except as permitted below.

The following are permitted:-

- (a) payments made or benefits granted to an officer or employee under his/her contract of employment with the association;
- (b) the payment of expenses to a committee member (including a co-opted member) or to an officer of the association who does not have a contract of employment with the association;
- (c) a payment of loan stock interest in accordance with the association's rules;
- (d) a payment to a former member of a fully mutual association under either the tenancy agreement or agreement by which he/she became a member;
- (e) the grant or renewal of a tenancy by a fully mutual housing co-operative;
- (f) where a tenancy has been granted to, or to a close relative of, a person who later becomes a committee member (including a co-opted member) officer or employee, the grant to that tenant of a new tenancy, whether of the same or another dwelling;
- (g) payments made or benefits granted by an association in such class or classes of case as may be specified in a Determination made by the Corporation with the approval of the Secretary of State.

APPENDIX II

HOUSING CORPORATION "EXEMPTIONS"

The first exemption: employment of employees relatives

The first exemption is designed to allow an association to employ close relatives of employees. The previous absolute ban which Section 15 imposes on doing so has no parallel in any other area of public service.

The second exemption: re-employment of former employees

This exemption allows an association to give a contract of employment to a person who was employed by the association in the previous twelve months.

Third exemption: housing of employees and their relatives

This exemption allows an association to provide accommodation (tenancies etc) to its employees, former employees, and their close relatives. Associations wishing to make use of this exemption will need to do so with caution, to avoid the risk of being seen to be unfair.

Fourth exemption: housing by tenant based housing associations of committee members and their relatives

The exemption allows such associations to provide accommodation to members and former members of their committees and close relatives of such people. This essentially puts them in a similar position to fully mutual co-operatives, and enables them to benefit from the full participation of the community they are set up to serve. The terms 'tenant' includes tenants on long leases.

Fifth exemption: housing of committee members relatives with special needs

This exemption would allow an association managing specialist supported provision for the elderly, the handicapped, or others with special needs to give accommodation to the relatives of committee members. It would not include general elderly accommodation where no special services are provided.

Sixth exemption: housing of homeless committee members and their relatives

This exemption allows an association to house a committee member or relative who has been nominated by a local authority for housing under a nominations agreement with the association, either as statutorily homeless or from the local authority's waiting list.

Seventh exemption: TIS payments to tenants who are employees or committee members

This allows tenant committee members and employees of all I&P associations to participate in the Corporation's Tenant Incentive scheme, whereby tenants are given payments to vacate their rented accommodation.

Eighth exemption: purchase of services by fully mutual and tenant based housing associations

This exemption allows a fully mutual co-operative, or a tenant based association, to pay people who have resigned from the committee within the last twelve months, or their close relatives, on an hourly basis to carry out casual work for the association. Committee members or their relatives would thus be able to tender for work. If successful, committee members would have to resign from the committee, but would not (as at present) have to wait for twelve months before they or their relatives began paid work.