



Policy Brief

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IMPLEMENTING FINANCIAL DISCLOSURE IN LOCAL GOVERNMENT Monitoring and oversight

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This policy brief is the final one of a four-part series designed to assist municipal staff and elected councillors in South Africa to manage and detect conflicts of interests in public life. The purpose of the series is to support the effective implementation of financial disclosure regulations by reflecting on institutional good practice and lessons learnt, and providing practical advice and recommendations.

Disclosure systems aim to strengthen public integrity, control conflicts of interest, optimise the effective delivery of public services and increase the public's confidence in government. These objectives rely on effective monitoring and enforcement. This policy brief addresses the monitoring and oversight of information that councillors declare.

CONFLICTS OF INTEREST IN LOCAL GOVERNMENT

In South Africa, municipalities have various governance and administrative challenges that undermine their ability to hold elected officials accountable. Many opportunities present themselves for councillors to use their public office for private gain. This contributes to the deterioration of effective governance and service delivery in municipalities.

Public procurement is one known cause of conflicts of interest and corruption in local government. The 2009-10 Auditor-General's Consolidated Report on Local Government Audit Outcomes (AG report) found that supply chain management (also known as state procurement) produced excessive irregularities

within municipalities, and stated that 'corruption and fraud cannot be discounted, especially among councillors and senior managers'. The AG report also noted that of the 56 per cent of municipalities and municipal entities investigated, awards were made to 642 persons who were in the service of the state. Of those, 19 were councillors in the service of a municipality.

Conflicts of interest and corruption continue unabated in municipalities despite financial disclosure regulations that aim to detect and control unethical activities. Why is this regulatory system failing to detect violations? The explanation may lie with a poorly conceptualised monitoring and oversight system that is designed to achieve compliance, but provides very little effective scrutiny to detect irregularities in the declared information.

VERIFICATION OF DISCLOSURE RECORDS

The verification of the completeness and accuracy of records is important to detect and control conflicts of interest and to maintain the disclosure system's integrity. If elected officials believe that their disclosure records are never checked, they may be more willing to omit information or provide false data. The disclosure regime also risks collecting a large amount of useless records with little purpose.

Ideally, a reviewer should protect councillors from invasions of privacy and scandal, ensure that declarations comply with legal requirements, and serve the public's interest by helping to detect and

manage potential conflicts of interest among councillors.

In South Africa, monitoring and enforcement remains largely the responsibility of staff located in parliaments and councils. These ‘in-house’ arrangements are beneficial for conflict of interest control, since submissions are made directly to a supervisor who is most likely to have knowledge about a public official’s duties and whether or not a private interest might interfere with them. However, they can only be effective in systems where supervisors perform their duties in full. In South Africa, however, reviewers are not required to fulfil the third function (outlined above) of detecting irregularities. Thus, the reviewer is not obliged to scrutinise the data provided by councillors. Monitoring and oversight requirements are rudimentary, only demanding that compliance is met.

Requirements for oversight and monitoring of declaration of interests: an in-house arrangement

The Code of Conduct for Councillors in Schedule 1 S. 7 of the Local Government Municipal Systems Act of 2000 requires councillors to declare their interests to the municipal manager. However, the code does not outline any specific requirements for internal or external review of the contents of disclosure to be performed by the institution or its staff.

If financial disclosure regulations are to be truly effective, declarations require a rigorous and systematic annual monitoring process where staff can flag irregularities and institute investigative proceedings where necessary.

Recognising this weakness, several municipalities have opted for additional investigatory measures that go beyond compliance checks. Of the 18 municipalities that the ISS interviewed in 2011, less than half have introduced additional internal review processes. Instead, most rely on external oversight through the Auditor-General’s Office where the contents of records are usually compared with data in the Companies and Intellectual Property Commission (CIPC, previously known as CIPRO) database.

Examples include the following:

- Johannesburg City Council introduced an *integrity commissioner* who is tasked with inspecting each declaration of interest and providing advice to councillors, and who has powers to initiate investigations.
- Midvaal Municipality requires that its councillors’ financial disclosure records are scrutinised by the council’s *Procurement Committee* to ensure greater oversight of councillors’ interests and activities.
- Some institutions have adopted an *internal review system* whereby declaration records are sent to the municipality’s internal audit department for checks.

Challenges for effective monitoring and oversight remain, however.

Retrospective external oversight – too little too late?

All municipalities are required to submit financial statements to the Office of the Auditor-General of South Africa (AGSA) for auditing purposes, which include information pertaining to the salaries, allowances and benefits of councillors. The AGSA checks for the compliance of declarations and tests for the completeness of the declaration form.

The AGSA is most interested in irregular expenditure, which often involves business being done by councillors with the municipality. However, the AGSA only detects irregularities long after the event occurred. At this point the detrimental effects of corruption on the municipality and service delivery are difficult to reverse. A well-resourced internal investigatory model may be better equipped to detect and thwart such incidents timeously.

Internal oversight – poorly resourced investigative capacity

To ensure more effective and timeous checks to detect irregularities, internal reviewers need to be able to compare the contents of declarations with information held in other public registers and agencies, including SARS, CIPC and banking institutions. It is doubtful that relevant staff in municipalities can easily access such databases or possess the skills to complete detailed audits.

Public access – a crucial, yet under-utilised oversight mechanism

Thus, the majority of municipalities continue to rely on public access to the information in councillors' disclosure records to detect conflicts of interests. For these institutions, external actors like the media, citizens, civil society and oversight bodies such as the Public Protector are critical for ensuring oversight and accountability. However, this method of oversight is flawed in several respects.

- Scrutiny of disclosed information only occurs once a complaint is lodged by citizens or a public body.
- Obtaining access to councillors' disclosure forms is very difficult for the majority of citizens.
- Most citizens (and journalists) are not equipped to perform proper audits or verification, since they are not permitted access to registers such as SARS data and personal banking information, nor are many likely to possess the relevant skills to use such data.
- Citizens are only allowed access to the public section of the declaration forms and are therefore denied the opportunity to scrutinise all relevant data and interests (especially data pertaining to spouses).

Breaches of Code

S. 14 of the Local Government Municipal Systems Act, 2000

The Code of Conduct for Councillors in Schedule 1, S. 14,2 of the Local Government Municipal Systems Act of 2000 states as follows:

If the council or a special committee finds that a councillor has breached a provision of this Code, the council may –

- (a) issue a formal warning to the councillor;
- (b) reprimand the councillor;
- (c) request the MEC for local government in the province to suspend the councillor for a period;
- (d) fine the councillor; and
- (e) request the MEC to remove the councillor from office.

ENFORCEMENT OF PENALTIES AND SANCTIONS

Violations, or failure to fulfil financial disclosure obligations, relate mainly to (1) failure to submit a declaration, or (2) incomplete or false submissions. South Africa's Code of Conduct outlines a list of disciplinary sanctions that include formal warnings, fines, suspension and dismissal.

Research suggests that municipal oversight functions are ineffective and rarely detect irregularities and violations. Of the 18 municipalities interviewed by the ISS, most report that their disclosure systems had never detected a conflict of interest among their councillors. If few violations are ever detected by municipal staff, it follows that municipalities are rarely required to enforce any sort of penalty or sanction against a councillor for breaches of the Code of Conduct. Monitoring focuses on compliance among councillors and less on violations relating to incomplete or false information, due mainly to poorly resourced investigatory capacities in most municipalities. It is therefore difficult to draw any conclusion on the effectiveness of the enforcement of sanctions by municipalities.

RECOMMENDATIONS

Mandating public disclosure by law is no guarantee of an effective regulatory framework that will detect and control the detrimental effects of conflicts of interest in public life. Municipalities and their staff have to actively participate in oversight and monitoring, and can do so in the following ways:

- ✓ Municipalities should recruit non-partisan and independent personnel with powers to proactively monitor and investigate potential irregularities and anomalies in declarations. This person can provide additional support to the municipal manager, who is primarily responsible for achieving 100% compliance.
- ✓ Municipalities should use their existing oversight structures and committees, such as internal procurement committees, to provide additional oversight support.
- ✓ Municipalities should call on SALGA to provide a standardised method of submitting declaration forms and more professional controls in the scrutiny of data to control conflicts of interests.

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- ✓ There is also merit in municipalities approaching external oversight institutions, including the AGSA or SARS, to provide further assistance.
- ✓ At present, public access to information is the primary mechanism that allows for the oversight of elected councillors' private

interests. Municipalities can promote public access to information – and thereby strengthen oversight and accountability – by publishing an annual electronic or hardcopy register containing all the councillors' latest financial disclosure records.

Councillors' latest financial disclosure records are available at:

Who Owns What? The ISS online database of politicians' interests and assets
www.issafrica.org/corruption/whoownswhat