

## **GENERAL DISPENSATIONS**

### Report of the Chief Legal Officer

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#### **1. Purpose of Report**

1.1 To consider granting dispensations under the Localism Act 2011.

#### **2. Summary**

2.1 The Localism Act 2011 (the '2011 Act') introduced the concept of Disclosable Pecuniary Interests ('DPIs'). The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 defined those interests that would constitute DPIs under the 2011 Act. It is a criminal offence for members to fail to register a DPI or to speak and/or vote where they have a DPI unless they have obtained a dispensation.

2.2 The Council has delegated the power to the Standards Committee to grant dispensations in respect of DPIs. It is suggested that the Chief Legal Officer be authorised to grant dispensations as set out in this Report to enable members to participate in meetings and to speak and vote where they would otherwise have a DPI.

#### **3. Recommendations**

1. That a dispensation is granted pursuant to the Localism Act 2011 to allow members to participate in debate and vote on the Council's Integrated Plan and setting the council tax or a precept under the Local Government Act 1992 (as amended from time to time or any superseding legislation) notwithstanding that their Partner is an employee of the Authority or of any other body or organisation who is affected by the Authority's budget provided that the dispensation does not apply in instances where the business to be considered directly affects the financial position of the member concerned or his/her Partner.

['Partner' has the meaning set out in paragraph 4.1 of the Report].

2. That the dispensation mentioned in 1 above applies for 4 years from the date that the dispensation is granted.

3. That the Chief Legal Officer be authorised to grant dispensations in relation to the matters set out in 1 above.

#### **4. Background**

- 4.1 The 2011 Act introduced the concept of DPIs and the Disclosable Pecuniary Interest Regulations 2012 define the categories of interest which comprise DPIs. A member must disclose any matter which falls within the categories of disclosable pecuniary interest if it applies to themselves or their partner (which means a spouse or civil partner, a person with whom the member is living as husband or wife, or a person with whom they are living as if they are civil partners).

One of the categories of disclosable pecuniary interests is:

‘Any employment, office, trade, profession or vocation carried on for profit or gain’.

- 4.2 It is a criminal offence if a member who is present at a meeting where he/she has a DPI in any matter to be considered or is being considered participates in any discussion of that matter or votes on the matter. These restrictions, however, do not apply where the member has applied for and been granted a dispensation.
- 4.3 The provisions of the 2011 Act are widely drawn and, as such, the provisions mentioned in 4.2 above may apply even if there is only a minimal impact on the member’s DPI or the DPI is only indirectly affected by the a matter to be considered or being considered at the meeting. Clearly if the item relates directly to the member’s DPI then the provisions mentioned in paragraph 4.2 would apply.
- 4.4 There were two court cases in 2015 relating to members who voted on matters where it was alleged that they should not have participated due to the matter affecting an interest that they had a registered as a DPI. In neither case did it appear that the DPI was directly affected by the subject matter of the Report being considered. In one case the Councillor concerned was found guilty of an offence by the Magistrates’ Court and given a six months conditional discharge, the District Judge commenting that the member could have applied for a dispensation. In the other case the High Court ruled that the member’s DPI was not engaged as it was not directly affected by the matter under consideration. Given the uncertainty the Monitoring Officer considers that it is appropriate for members to seek a dispensation if there is likelihood that the member’s DPI is engaged indirectly.
- 4.5 Some members have partners who are employed by the Council or by a body/organisation that is affected by the Council’s Integrated Plan and budget. Often the connection with the member’s DPI is remote. Given the uncertainty around when a DPI may be engaged the

Monitoring Officer considers that, if requested, dispensations could be granted to allow members to participate in meetings and business of the Council relating to the Integrated Plan and the Council's budget where the DPI referred to in paragraph 4.1 above might be engaged provided that the business does not directly affect the member's DPI.

## **5. Application for Dispensation**

- 5.1 The 2011 Act provides that, following a written request made to the proper officer, dispensations can be granted to enable members to participate in meetings where they have a DPI provided that certain grounds are satisfied. The grounds for the grant of a dispensation are, if having regard to all the relevant circumstances, the Council considers that:
- 5.1.1 without the dispensation the number of persons prohibited from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business;
  - 5.1.2 without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business;
  - 5.1.3 the grant of the dispensation would be in the interests of the persons living in the authority's area;
  - 5.1.4 without dispensation each member of the authority's executive would be prohibited from participating in any particular business to be transacted by the authority's executive;
  - 5.1.5 it is otherwise appropriate to grant a dispensation.
- 5.2 The Monitoring Officer considers that the ground set out in paragraph 5.1.5 could apply to the matter referred to in paragraph 4.5 of this Report. This would not be the case if any item in the budget or Integrated Plan directly affected the financial position of the member concerned or his/her partner.
- 5.3 Dispensations can be granted for a period of up to four years. It is proposed that dispensations be granted for the period of 4 years
- 5.3 If the Committee considers that it is appropriate to grant a dispensation as set out in this Report the Monitoring Officer will advise members accordingly and will grant dispensations to those members who apply on the basis agreed by the Committee.

## **6. Financial Implications**

None

### *Background Information*

Chapter 7 Localism Act 2011 and the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012

<http://www.legislation.gov.uk/uksi/2012/1464/made/data.pdf>