

(b) Human Rights Act and Other Legal Implications

The Act places the Council under a statutory duty to establish a newly ordered ethical framework:

- Under section 27(2) it must adopt a code of conduct dealing with the conduct that is expected of members and co-opted members when they are acting in that capacity,
- Under section 29 (1) the Monitoring Officer must establish and maintain a register of members' interests.

5. Supporting Information

Code of Conduct

- 5.1 The Localism Act 2011 and the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 introduced Disclosable Pecuniary Interests (DPIs) and new rules on dispensations as part of the new conduct arrangements.
- 5.2 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.

General Dispensations

- 5.3 Section 31(4) of the Localism Act provides that a member who has a DPI in any matter to be considered at a meeting may not participate in any discussion, or vote on the matter and that if they do so they will effectively be both breaching the Code of Conduct and also committing an offence.
- 5.4 However, by virtue of section 33, an authority may, on a written request by a member, grant a dispensation relieving the member from either or both of the restrictions in Section 31(4). Section 33(2) provides that a dispensation may be granted where the authority:
- (a) considers that 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,
 - (b) considers that 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,
 - (c) considers that granting the dispensation is in the interests of persons living in the authority's areas, or
 - (d) considers that it is otherwise appropriate to grant a dispensation.
- 5.5 The Council has delegated the power to grant dispensations to members and co-opted members in accordance with section 33 of the Localism Act 2011 to the Monitoring Officer with a requirement to report any dispensations granted to the next meeting of the

Council. A dispensation allows members and co-opted members to be present, take part in debate and vote on any item in which they have a DPI.

5.6 In order to protect Members it is recommended that a general dispensation is granted to all Members to be present, speak and vote where they would otherwise have a DPI on the grounds that it is appropriate to grant a dispensation to allow all Members to participate fully in the following matters:

- (a) Housing: where the member (or spouse or partner) holds a tenancy or lease with the Council as long as the matter does not only relate to the member's particular tenancy or lease*.
- (b) school meals or school transport and travelling expenses where the member is a parent or guardian of a child in full time education, or is a parent governor of a school, provided that the matter does not only relate to the particular school which the child attends;
- (c) Housing Benefit: where the member (or spouse or partner) directly receives housing benefit in relation to their own circumstances
- (d) Allowances, travelling expenses, payments or indemnity for members; [looked as though it could be one payment to one]
- (e) Setting the Council Tax or a Precept; and
- (f) Decisions in relation to Council Tax Benefit.

*Any general housing related dispensations afforded to members will not negate the need for members to declare a personal or prejudicial interest; particularly where the member or spouse holds a tenancy or lease with the Council and a matter requiring a decision may/will impact their own Council tenancy.

For example in cases where the matter particularly affected their local neighbourhood and was considered to affect their own tenancy more than other people in the Authority's area, the Member should consider whether it is appropriate to participate in the decision making process.

For the avoidance of doubt and to ensure adherence to the member code of conduct, members should seek guidance from the Council's Monitoring Officer.

5.7 Members' allowances are included in this general dispensation for the avoidance of doubt and for completeness even though they are not a DPI.

5.8 It is recommended that the general dispensation applies until the next election (May 2016) and that the Council considers granting general dispensations annually at its annual meeting.

5.9 Dispensations for Council Tax relate to Members' DPIs, and do not affect a Member's obligation under Section 106 of the Local Government Finance Act 1992 to declare and not vote if they are two months or more in arrears with their Council Tax when voting on setting the Council's budget.

Specific dispensation to stay, speak and vote on any matter

- 5.10 The Monitoring Officer has been authorised under section 33 of the Localism Act 2011, to grant a dispensation in the following circumstances:
- 1 Where so many members of the decision-making body have Disclosable Pecuniary interests in a matter that it would “impede the transaction of the business”. In practice this means that the decision-making body would be inquorate as a result;
 - 2 Where, without the dispensation, the proportion of different political groups on the body transacting the business would be so upset as to alter the outcome of any vote on the matter;
 - 3 Where the authority considers that the dispensation is in the interests of persons living in the authority’s area;
 - 4 Where, without a dispensation, no member of the Cabinet would be able to participate on this matter; or
 - 5 Where the authority considers that it is otherwise appropriate to grant a dispensation.
- 5.11 Any grant of a dispensation must specify how long it lasts and only be in effect up to a maximum of 4 years.
- 5.12 The Monitoring Officer is required to report any dispensations granted to the next meeting of the Council.
- 5.13 The Council has agreed a form for members to request a dispensation. The form is incorporated into the Code of Conduct and is attached for ease of reference as Appendix A to this report.

Comments of Audit and Corporate Governance Committee.

- 5.14 The Audit and Corporate Governance Committee considered details of the report at it’s meeting on 10th March 2016.
- 5.15 Members sought clarity regarding the requirement of a notice period (if any) when seeking a dispensation and whether it could be issued at meetings. It was also queried whether a database would be maintained recording dispensations granted so as to remind Members of dispensations in place and once granted, how long the dispensation(s) remained in effect.
- 5.16 In relation to 5.15 the Monitoring Officer has confirmed that dispensations will not be issued at meetings. The minimum notice period for seeking a dispensation will be 2 clear working days prior to the date of the meeting. In the event of a supplementary agenda/late report being issued, a minimum notice period of 1 clear working day’s notice before the meeting will be required.
- 5.17 The Monitoring Officer has also confirmed that it is the responsibility of Members to maintain a record of dispensations granted to them and act accordingly in line with the Member’s Code of Conduct.

- 5.18 The Monitoring Officer also confirmed that as per 5.11 the maximum duration for a dispensation is 4 years but that the Monitoring Officer will review each request for dispensation on individual merit and accordingly set an appropriate timeframe.
- 5.19 It was also confirmed that a database of dispensations granted would be maintained by Democratic Services, details of which will also be published on the Council's website.
- 5.20 The Committee agreed that the recommendations be referred to Council for agreement.

Conclusion

- 5.15 The Council is requested to approve the dispensations as recommended in Paragraph 2 (a) to (d) of the report.

6. Appendices Attached

Appendix A Request for a Dispensation

REQUEST FOR A DISPENSATION

Request to Monitoring Officer

Please complete the following details and give as much information as possible (you can attach additional sheets of paper, if required).

- 1. Please summarise the matter to which your interest relates**

- 2. What is the nature of your interest?**

- 3. For which meeting(s) or period are you seeking a dispensation?**

- 4. Please set out in detail the reason(s) why you consider you should be granted a dispensation.**

| | Name | Signature | Date |
|--|-------------|------------------|-------------|
| | | | |

When completed, this form should be sent to the Monitoring Officer

Section 33(2) of the Localism Act

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- 4 Where, without a dispensation, no member of the Cabinet would be able to participate on this matter; or
- 5 Where the authority considers that it is otherwise appropriate to grant a dispensation.