

CODE OF CONDUCT AND MEMBERS' INTERESTS - DISPENSATIONS

EXECUTIVE MEMBER: Councillor Elaine Woodburn
LEAD OFFICER & REPORT AUTHOR Tim Capper, Democratic Services Manager and Monitoring Officer

Why has this report come to the Audit and Governance Committee?

At the last meeting of the Committee on 20 June Members noted the new responsibilities of the Committee agreed by Council on 14 June for overseeing the Code of Conduct for Members and associated matters following the disestablishment of the Standards Committee on 1 July, and the additional terms of reference to reflect these new responsibilities, including establishing a scheme for dispensations and authority to determine applications for dispensations from Members. This report sets out the detailed arrangements for dealing with dispensations.

Recommendations:

The Audit and Governance Committee are recommended to:

- (a) Note that dispensations can only be granted for Members affected by Disclosable Pecuniary Interests;
- (b) Note the circumstances in which dispensations can be granted as set out in paragraph 2.1;
- (c) Agree the criteria for assessment and determination of applications for dispensations as set out in Appendix "A"; and
- (d) Agree that in the first instance all applications for dispensations are determined by this Committee, but that this arrangement is kept under review, and consideration given in future to possible delegation of determination of certain categories of dispensation to a Sub Committee or to the Monitoring Officer.

1 Introduction

1.1 Section 33 of the Localism Act gives local authorities powers to grant dispensations to any of its members affected by Disclosable Pecuniary Interests, which relieve the affected Members from the restrictions placed on them by Section 31(4) of the Act. These restrictions are that Members cannot participate in discussions, or vote, on matters considered in meetings where the Member is present on matters in which they have Disclosable Pecuniary Interests (DPI's).

1.2 A dispensation is effectively a mechanism for relieving a Member of the requirement that he/she cannot participate in the discussion or voting on a matter in which the Member has a DPI. A dispensation can relieve the Member of either of the restrictions imposed by Section 31(4) (of not being able to participate in the discussion; or of not being able to vote), or both.

1.3 It should be emphasised that under Section 33 of the Act, dispensations can be granted only to Members affected by Disclosable Pecuniary Interests. They cannot be granted in any other circumstances, for example where Members are unable to participate in decision-making due to possible allegations of bias or predetermination.

1.4 The Council at its meeting on 14 June delegated authority to this Committee to agree a scheme of delegations, and to determine applications for dispensations from Members.

2 Circumstances in which Dispensations can be Granted

2.1 Under Section 33 of the Act, a dispensation can be granted in the following circumstances:

(i) That so many members of the decision-making body have DPI's in a matter that their inability to participate and vote would "impede the transaction of the business" – in practice meaning that the decision-making body would be inquorate as a result.

(ii) That, without the dispensation, the representation 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.

(iii) That the authority considers that the granting of the dispensation is in the interests of persons living in the area.

(iv) That, without a dispensation, no Member of the Executive would be able to participate in a particular matter being considered by the Executive.

(v) That the authority considers that it is otherwise appropriate to grant a dispensation.

3 Proposed Arrangements

3.2 Whereas the previous legislative framework required that dispensations could be considered and granted only by the Standards Committee itself, the Localism Act 2011 gives

discretion to individual authorities to decide what arrangements they consider appropriate to put in place, hence the decision of Council on 14 June to delegate this function to the Audit and Governance Committee.

3.3 Of the grounds for granting dispensations set out in 2.1 above, the Committee will note that those in (i) and (iv) involve little subjective judgement, but rather a simple arithmetical calculation to establish whether or not the number of Members affected by the interest is sufficient to impede the business in the way described. The grounds set out in (ii), (iii) and (v) do, however involve some subjectivity of judgement and it is suggested that some criteria for assisting the Committee in making decisions on such applications might be helpful. A proposed set of criteria for assessment of such applications is attached at Appendix "A".

3.4 It is suggested that all applications for dispensations are dealt with by the Audit and Governance Committee itself, but that this is kept under review in the light of the number of applications for dispensations that are received. It may be that in future consideration would need to be given to other arrangements such as delegation of certain categories of dispensations to a Sub Committee of this Committee or to the Monitoring Officer.

4 Conclusion

4.1 This report sets out detailed arrangements for dealing with applications for dispensations, in accordance with the new statutory framework and with the decisions of Council on 14 June.

Consultees: Leader; Chair of Audit and Governance Committee; Chief Executive; Section 151 Officer

Monitoring Officer comments: Included in report

S151 Officer comments: No comments as all of the related activity for this area of work is included within existing budgets so there are no financial implications arising from this report.

EIA comments: No groups are advantageously or disadvantageously affected by the proposals in the report.

Appendices – Appendix "A" Proposed Criteria for Determining Applications for Dispensations

APPENDIX "A"

CRITERIA FOR DETERMINING APPLICATIONS FOR DISPENSATIONS UNDER GROUNDS (ii), (iii) or (v)

In determining whether or not to grant a request for a dispensation, regard shall be had to the following:

1 Whether the nature of the Member's interest is such that to allow them to participate would damage the public's confidence in the conduct of the authority's business – *for example a dispensation would not normally be granted to a Member who has a disclosable pecuniary interest which has a potential effect (advantageously or disadvantageously) on his financial position, or that of his spouse or civil partner.*

2 Whether the interest is common to the Member and a significant proportion of people in the local community? *If this is the case a dispensation is more likely to be granted*

3 Is the participation of the Member with the interest that the business relates to justified by the Member's expertise or knowledge of the matter under discussion? Does the value of this expertise or knowledge outweigh the public interest and expectation that the Member should not participate in a matter in which he/she has an interest?