

**Applications for Dispensations**

**Report of the Head of Law and Governance**

**Background**

1. As members are aware, the Localism Act 2011 made changes to the requirements regarding the registration and disclosure of members' interests. Included in these changes is the requirement that members do not participate in any discussion or vote on a matter at a meeting where they have a disclosable pecuniary interest (DPI) in the matter, unless a dispensation has been granted. The Act provides that the prohibition on participation does not apply in relation to anything done for the purpose of deciding whether to grant a dispensation.
2. Under the previous legislation, specific exemptions were given to members so that they would not have a prejudicial interest (which would have prevented them from taking part in the decision making process) in any business that related to the functions of the authority in respect of:
  - a) housing, where the member was a tenant of the authority provided that those functions did not relate particularly to the member's tenancy or lease;
  - b) school meals or school transport and travelling expenses, where the member was a parent or guardian of a child in full time education, or was a parent governor of the school, unless it related particularly to the school which the child attended;
  - c) statutory sick pay under part XI of the Social Security Contributions and Benefits Act 1992 where the member was in receipt of or was entitled to the receipt of such pay.
  - d) an allowance, payment or indemnity given to members;
  - e) any ceremonial honour given to members;
  - f) setting council tax or a precept under the Local Government Finance Act 1992

These exemptions have not been carried over to the new legislation.

**Dispensations**

3. Section 33 of the Localism Act 2011 allows the Council, on written request made to the proper officer by a member of the authority, to grant a dispensation allowing the member to participate in the discussion and / or take part in any vote on a matter where they have a DPI.

Dispensations can be granted where:

- so many members have DPIs that it would impede the transaction of the business
  - 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
  - the dispensation is considered to be in the interests of persons living in the authority's area
  - without the dispensation, no member of the Cabinet would be able to participate in any particular business transacted by the executive; or
  - the authority considers that it is otherwise appropriate to grant a dispensation
4. The Head of Law & Governance has delegated authority to grant dispensations where so many members have DPIs that it would impede the transaction of the business and also where, without the dispensation, no member of Cabinet would be able to participate in the business to be transacted by the executive. The Standards Committee has authority to grant dispensations on the remaining grounds.
  5. As is referred to in another report before this meeting, an area of uncertainty with the new Standards Regime is the question of when a member has a DPI in a matter, so that the prohibition on participation applies.
  6. Property interests are DPIs and therefore a number of authorities have taken the view that the non-participation provisions may be engaged when matters relating to the council tax are being discussed.

On 5 February 2013, Brandon Lewis MP issued a letter to local authority leaders expressing the view that councillors do not need to obtain dispensations to participate in discussions or vote on the council tax setting process and the local council tax support scheme.

The letter states:

*"Whilst my department does not issue legal advice, in our opinion, such dispensations are unnecessary. Council tax liability applies to the generality of the population; councillors have no unique position in that regard.*

*Being a council taxpayer or being eligible for a discount under the new local arrangements for council tax support are pecuniary interests, but **are not disclosable pecuniary interests** as specified in regulations.*

*Therefore a **councillor does not need to seek a dispensation** in order to participate in discussions or vote on decisions in the council tax setting process or local arrangements for council tax support. I made this clear in the Parliamentary debate, which I would encourage you to read.*

*Holders of public office should be guided by the Nolan Principles. I believe that the blanket act of every councillor declaring the obvious (that residents are liable for council tax) adds nothing to that cause. Indeed,*

*Section 106 of the Local Government Finance Act 1992 prohibits councillors who are in council tax arrears (by two or more months) from voting on Budgets. So there is a clear expectation that the generality of councillors are paying council tax.”*

However, bearing in mind the terms of the legislation, the Head of Law and Governance remains of the view that while it may not have been the Government's intention that an interest in property affected by council tax would amount to a DPI when setting the council tax, this may well be an unintended legal consequence of the legislation.

7. A number of authorities that have taken this view have made arrangements for dispensations to be granted to their members.

It is considered that while there is uncertainty, particularly in view of the fact that there are now criminal sanctions for taking part in the consideration of a matter in which a member has a DPI, it is sensible for members to apply for dispensations.

8. The Head of Law and Governance has given consideration to those areas where she considers that the majority or a significant number or members may have a DPI and / or where it may be appropriate for dispensations to be granted. Whilst it is understood that some authorities have simply granted a 'general' dispensation to apply to all members in respect of specified areas of business, technically, under the legislation, a member should first submit a written application. Members have therefore been invited to make written applications for dispensations in respect of the following matters:
  - a) Where the matter relates to the housing functions of the Council and affects a registered provider of which the member or a relevant person is a tenant, (provided that the matter does not particularly relate to the tenancy or lease of the member or relevant person).
  - b) An allowance, payment or indemnity given to a member.
  - c) Any ceremonial honour given to a member.
  - d) Setting the council tax and budget or a precept under the Local Government Finance Act 1992 as amended from time to time or any superseding legislation.
  - e) Setting a local council tax reduction scheme for the purposes of the Local Government Finance Act 2012 as amended from time to time or any superseding legislation.
  - f) Matters relating to Sunderland City Council, Hetton Town Council, the Tyne & Wear Fire and Rescue Authority or the Integrated Transport Authority at any time when the member is a member or holds a position of responsibility and is in receipt of an allowance from the relevant authority.
  - g) Any matter relating to a trade union or other body which has made any payment or provided any other financial benefit in respect of any expenses incurred in carrying out duties as a

member, or towards election expenses (provided the matter does not particularly relate to the payment or financial benefit provided to the individual member).

9. Members will see that the business set out in 'a' to 'd' is very similar to the business included in the exemptions under the previous Standards Regime. A specific reference to setting the budget has been included in 'd' to reflect the fact that nationally, the practice was to take a broad approach to the interpretation of what was meant by the exemption for 'setting the Council Tax' and that this should be taken to include setting the budget. Category (e) relates to the local council tax support scheme which, as with the council tax, arguably is a matter in which all members with property interests will have an interest, to a greater or lesser extent.
10. With regard to category (f), there is some uncertainty regarding how the category of DPI which relates to 'any employment, office, trade, profession or vocation carried on for profit or gain' should be interpreted. Arguably this could apply to members who receive an allowance from bodies such as the Fire Authority and ITA. The dispensation proposed in respect of matters in paragraph 'f' will clarify that members who have a DPI by virtue of their membership of these bodies, will not automatically be prohibited from participating in matters relating to those bodies.
11. Finally, one of the categories of DPI relates to 'sponsorship.' Under this category, members must declare any payment or other financial benefit in respect of expenses incurred in carrying out duties as a member or towards their election expenses. Again, there is some uncertainty over whether this should be interpreted in such a way that the DPI would only be an issue at a meeting if the matter under consideration related particularly to the member's interest i.e. to the payment or financial benefit received, or whether it is intended to apply any wider than that. As there is some doubt as to how this should be applied, in order to avoid a member inadvertently committing a technical breach of the provisions regarding participation in meetings, it is proposed that members be awarded a dispensation in order to deal with any matters relating to a body from which they have received expenses etc.
12. In respect of the matters referred to at paragraph 8 (b),(d) and (e), it is considered likely that without the dispensations being granted, the number of members who will be prohibited from participating in the business would be so great that it would impede the transaction of the business.
13. In respect of all of the matters referred to at paragraph 8 (a) to (g), the committee may consider that the granting of the dispensations would be appropriate in order to enable full debate to take place on these areas and to avoid members inadvertently committing a technical breach of the legislation.

14. Applications for dispensations have been received from all elected members of the Council. Dispensations have previously been granted by the Head of Law and Governance to enable members to deal with matters relating to members' allowances and the council tax, including the local tax support scheme. These areas of Council business are also reflected in the current applications for dispensations and if the Committee is agreeable to granting the applications, this will have the advantage of the dispensations covering the various areas of council business referred to, running from the same date.

It is proposed that the dispensations be granted for a period of four years.

15. Unless there is further legislation or case law to clarify the uncertainties regarding DPIs, this issue will continue to arise following future elections and changes in Council membership. Members may therefore also consider it appropriate to delegate authority to the Head of Law and Governance to grant dispensations in the same terms where applications are received from members. (Any request for a dispensation in respect of any other area of Council business will of course be considered and dealt with either by the Head of Law and Governance or Standards Committee as appropriate, under the agreed arrangements).

### **Bias / Predetermination**

16. For the avoidance of doubt, the granting of a dispensation does not override any issues of bias and / or predetermination. Therefore should there be a matter under discussion before the Council in which a member's interest (whether or not also registered as a DPI), gives rise to an issue of bias or predetermination, the member should still not take part in consideration of the matter under discussion. To do so could potentially expose the decision of the Council to risk of challenge and the member may also arguably be in breach of the general conduct provisions of the Members' Code of Conduct.

The intention of the proposed dispensations is to avoid members committing a "technical" breach of the legislation, in a situation where there is no prejudice to the public interest. Members will still need to be alive to those situations where their interest is such that there is an issue of bias or predetermination. In such circumstances they should declare their interest to the meeting and not take part in consideration of the matter.

17. By way of example, if the dispensation referred to in paragraph 8 (f) is granted, this will confirm that there will not automatically be any issue with a member of the Tyne and Wear Fire and Rescue Authority considering Council business which relates to that Authority. However, if the Fire Authority made an application for planning permission to this

Council, it would not be appropriate for such a member to take part in a meeting of the Development Control Sub Committee which was considering the planning application as, at common law, this could give rise to an appearance of bias.

Detailed advice has recently been circulated to members regarding bias and predetermination.

### **Recommendations**

It is recommended that:

1. dispensations be granted to all elected members of the Council, for a period of four years from the date of this decision, to enable them to participate in any meeting of the Council, including Cabinet, Committees, Sub-Committees, Panels and Boards, in any of the business referred to in paragraph 8 (a) to (g) of this report, including speaking and voting, provided that where the interest of the member is such that it gives rise to any issue of bias or predetermination in respect of the business being considered, the member shall not participate in the consideration of the business; and
2. the Head of Law and Governance be authorised to grant dispensations in similar terms to any individual who subsequently becomes a member of the Council and who submits a written application for such a dispensation.

### **Background Papers**

None