

TRAFFORD COUNCIL

Report to: Standards Committee
Date: 14 September 2016
Report of: Director of Legal and Democratic Services and Monitoring Officer

Report Title

LOCAL GOVERNMENT STANDARDS – GENERAL DISPENSATIONS

Summary

The Committee granted a range of dispensations to all Members in 2012. These were granted for a period of four years.

The purpose of this report is to consider what general dispensations ought to be granted to members to allow them to participate in council business where they have a disclosable pecuniary interest.

It is recommended that the current arrangements continue for a further four years.

Recommendation(s)

- (1) That the committee grants dispensations for four years to all members having a disclosable pecuniary interest or prejudicial interest allowing them to both speak and vote in relation to the following functions of the council
 - a) school meals or school transport and travelling expenses, where the member is a parent or guardian of a child in full time education, unless it relates particularly to the school which the child attends;
 - b) the provision of any allowance, payment, pension, indemnity or other financial benefit given to members;
 - c) housing, where they are a tenant of the Council provided that those functions do not relate particularly to their tenancy or lease;
 - d) setting council tax or a precept
- (2) That the committee grants the following dispensations for four years to members who are elected members or co-opted members of another public authority or directors of a council owned company and who have a disclosable pecuniary interest or a prejudicial interest in a matter only by virtue of the fact

that s/he is in receipt of an allowance from that other authority or is an unpaid director of that company

- a) Where the issue is a matter of dispute between the council and the other authority or the company and the matter would affect the financial position of that other authority or that company the member may speak on the matter provided s/he immediately withdraws from the meeting room
- b) In relation to other matters affecting that other authority or company the member may speak and vote.

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Background Papers:

Localism Act
Statutory Instruments
DLG guidance

1. Background

- 1.1 The proposals set out in this report are aimed to protect members from inadvertent breaches of the requirements related to Disclosable Pecuniary Interests due to omissions and ambiguities in the legislation and to ensure that the council can conduct its business. As there are potential criminal sanctions the position should be as clear as it can be in the interests of both members and the public.
- 1.2 The code of conduct that each authority adopts for its members must include provisions that the authority considers appropriate for the registration of pecuniary and other interests. Any code must include statutory provisions relating to the disclosure of pecuniary interests.
- 1.3 Monitoring Officers must establish and maintain a register of members and co-opted members' interests and this must include in it disclosable pecuniary interests.
- 1.4 The Act introduced the concept of "Disclosable Pecuniary Interests on Taking Office" which members must notify the Monitoring Officer of. "Disclosable Pecuniary Interests" are defined by regulations. Failure to register a "Disclosable Pecuniary Interest" is made a criminal offence by the Act as is failure to declare such an interest at a meeting at which it arises unless that interest is already on the register.

2. Granting dispensations

- 2.1 Under the standards regime the Council can grant a dispensation to a member with a disclosable pecuniary interest in an item of business to remain and vote on the issue. The member must make a written application.

2.2 The Council has delegated to the Monitoring Officer the power to determine requests for dispensations on grounds (1)-(3) below, subject to a member's right to appeal to the Standards Committee. The grounds are:

(1) So many members have disclosable personal interests (dpi's) that it would impede the transaction of the business;

(2) Without the dispensation the strengths of political groups on the body would be so upset as to alter the likely outcome of any vote on the matter;

(3) Without the dispensation, every member of the Executive would have a (dpi) prohibition from participating;

In addition to the right of appeal against the Monitoring Officer's refusal to grant a dispensation the Standards Committee only can grant a dispensation on the following grounds:

(1) The grant of the dispensation would be in the interest of the inhabitants of the authority's area; or

(2) It is otherwise appropriate to grant the dispensation.

2.3 Under the previous ethical regime a person with a prejudicial interest in an item of business had limited rights to attend a meeting at which that business was being discussed and no right to vote. However, subject to the member disclosing the interest at the meeting, they could attend a meeting and vote on a matter where they had a prejudicial interest that related to the functions of their authority in respect of:

(a) school meals or school transport and travelling expenses, where they are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;

(b) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where they are in receipt of, or are entitled to the receipt of, such pay; and

(c) any ceremonial honour given to members.

(d) housing, where they are a tenant of the Council provided that those functions do not relate particularly to their tenancy or lease;

(e) an allowance, payment or indemnity given to members;

(f) setting council tax or a precept under the Local Government Finance Act 1992.

2.4 Under the standards regime business arising under some of the above could give rise to a disclosable pecuniary interest. So, for instance, members who are council tenants or have other property interests in the area and members who have transport or other arrangements for their children in relation to the education function appear to require a dispensation to allow them to participate in council discussions about these issues. For example, all councillors will be council tax payers and/or business rate payers. The impact of having a disclosable pecuniary interest is that the member is barred from participating in any discussion or vote on a matter in which they have a DPI. However the new legislation has provided arrangements for granting dispensations. Therefore

the Committee is asked to grant similar dispensations to all members to ensure the business of the local authority can be transacted.

- 2.5 Also it is necessary to consider what general dispensations may be needed for members to take part in discussions about the business of other authorities that pay them an allowance or council owned companies of which they are unpaid directors. Without such a dispensation members are technically committing a criminal offence if they participate in council business about other authorities that pay them an allowance and would often have a prejudicial interest when participating in council business affecting a council owned company of which they are a director. Although the Monitoring Officer could grant a general dispensation to cover council tax and precept setting it makes sense for the Standards Committee to consider all the general dispensations needed and form a view about the appropriateness of granting them.

3. **Proposed dispensations**

- 3.1 A range of dispensations were granted in 2012 for four years and it is proposed that the Standards Committee should continue to use its power to grant a general dispensation to all members on the grounds that "it is otherwise appropriate to grant the dispensation." The proposal is that the general dispensation would largely mirror that set out in paragraph 2.3 above.
- 3.2 In addition it is suggested that members and their spouses or partners who are or may become members of another authority which pays them an allowance would technically have a disclosable pecuniary interest in any items of business that the Council considered that relates to that authority. Therefore it is recommended that all members should continue to have a general dispensation to allow them to take part in discussions if they find themselves in that situation. However, where the item of business would directly affect the financial position of the other authority it is suggested that the member should only be allowed to speak and not vote on the issue.
- 3.3 Similarly members who are paid directors of council owned community interest companies would have a disclosable pecuniary interest in any items of business that the Council considered which related to that company. Where a member is an unpaid director although they would not have a disclosable pecuniary interest they would nevertheless have a prejudicial interest in any items of business that the Council considered which related to that company and this would generally prevent them from participating in those items. Therefore it is recommended that all members who are unpaid directors of council owned companies should have a general dispensation to allow them to take part in discussions if they find themselves in that situation. However, where the item of business would directly affect the financial position of the company it is suggested that the member should only be allowed to speak and not vote on the issue.
- 3.3 A suggested form for the general dispensations that would be given to all members is set out below and be for a further period of four years (i.e to 2020):
- (1) That the committee grants dispensations for four years to all members having a disclosable pecuniary interest or prejudicial interest allowing them to both speak and vote in relation to the following functions of the council

- a) school meals or school transport and travelling expenses, where the member is a parent or guardian of a child in full time education, unless it relates particularly to the school which the child attends;
 - b) the provision of any allowance, payment, pension, indemnity or other financial benefit given to members;
 - c) housing, where they are a tenant of the Council provided that those functions do not relate particularly to their tenancy or lease;
 - d) setting council tax or a precept
- (2) That the committee grants the following dispensations for four years to members who are elected members or co-opted members of another public authority or directors of a council owned company and who have a disclosable pecuniary interest or a prejudicial interest in a matter only by virtue of the fact that s/he is in receipt of an allowance from that other authority or is an unpaid director of that company
- a) Where the issue is a matter of dispute between the council and the other authority or the company and the matter would affect the financial position of that other authority or that company the member may speak on the matter provided s/he immediately withdraws from the meeting room
 - b) In relation to other matters affecting that other authority or company the member may speak and vote.