

By: Geoff Wild – Director of Governance and Law
To: Standards Committee – 23 January 2013
Subject: Localism Act 2011 – Member dispensations

Purpose: The Committee is recommended to delegate authority to the Monitoring Officer to grant dispensations to Members for the remainder of the term of this Council, i.e. until Tuesday 7 May 2013 to enable their participation in a range of matters previously permitted under the 2007 Member Code of Conduct, including the setting of the Council's budget and Council Tax.

Unrestricted

Summary

1. As well as repealing the legislation relating to the 2007 Model Code of Member Conduct, the Localism Act 2011 also repealed a number of general dispensations for Members. In particular, there are no relieving provisions for Members to enable them to consider certain matters, such as the setting of the Council's Budget and the Council Tax, and approving the Members' Allowances Scheme.

2. The 2007 Code of Conduct at paragraph 10(2) stated that:

You do not have a prejudicial interest in any business of the authority where that business relates to:

- (i) School meals or school transport and travelling expenses, where you 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;
- (ii) Statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
- (iii) An allowance, payment or indemnity given to Members;
- (iv) Any ceremonial honour given to Members; and
- (v) Setting council tax or a precept under the Local Government Finance Act 1992

3. According to the Department of Communities and Local Government (DCLG), it was not the Government's intention that Members would be regarded as having a Disclosable Pecuniary Interests (DPI) in these specific areas, hence there is no relieving provision in the statutory regime. However, the law is far from clear on this issue and does not explicitly support the DCLG position.

4. For the avoidance of doubt, therefore, it is recommended that this Committee delegates authority to the Monitoring Officer to grant dispensations for Members to participate in budget and Council Tax setting (and other matters – see paragraph 9 of this report).

Dispensations under the Localism Act 2011 Part 1 Chapter 7

5. The Localism Act 2011 and the current Code of Member Conduct (adopted by this Council on 19 July 2012 and applicable retrospectively from 1 July 2012) provides for the disclosure by Members and co-opted Members of two types of interests:

- (a) Disclosable Pecuniary Interests (DPIs) (as described in **Appendix 1**), where it is an interest of either the Member, the Member's spouse or civil partner, or a person with whom they are living as husband and wife or civil partners, and provided the Member is aware that the other person has the interest; and
- (b) Other Significant Interests (OSIs). An interest that affects the financial position of a Member and/or an Associated Person; or relates to the determination of a Member's application for any approval, consent, licence, permission or registration made by, or on behalf of, the Member and/or Associated Person; and which, in either case, a member of the public with knowledge of the relevant facts would reasonably regard as being so significant that it is likely to prejudice the Member's judgement of the public interest.

6. The disclosure of a DPI involves the registration of interests in the Members' Register of Interests and disclosure at a Council, Cabinet or Committee meeting. A Member having a DPI may not:

- (a) Participate, or participate further, in any discussion of the matter at the meeting, or
- (b) Participate in any vote, or further vote, taken on the matter at the meeting, as a result the Member must leave a meeting while any discussion or vote takes place.

7. A Member with an OSI may attend a meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose. The Member is required to withdraw from the meeting room immediately after making representations, answering questions or giving evidence.

8. However, section 33(1) of the Localism Act 2011 provides that the Council may grant a dispensation to a Member who has a DPI to enable the Member to participate in any discussion of, or vote taken on, the matter at the meeting.

9. The Code of Member Conduct states at paragraph 8 that a dispensation may only be granted in the following circumstances:

- (a) Where the Member has made a written request to the Monitoring Officer
- (b) Where the Council 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
- (c) Where the Council 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
- (d) Where the Council considers that granting the dispensation is in the interests of persons living in the Council's area, and
- (e) Where the Council considers that it is otherwise appropriate to grant a dispensation.

10. However, the Localism Act 2011 and its Regulations do not provide any relieving provisions for any of the circumstances described in paragraph 2 above and, therefore, it is recommended that the Monitoring Officer be requested by this Committee to grant such dispensations. The record of this Committee's decision on this matter will suffice as a written request on behalf of all Members of the Council. The dispensation is requested for the following reasons:

- (a) Without the dispensation, the number of persons prohibited from participating in the budget and council tax setting item, together with the approval of the Members' Allowances Scheme and ceremonial honours at County Council meetings, would be so great a proportion of the body transacting the business as to impede the transaction of business
- (b) Granting the dispensation is in the interests of persons living in the Authority's area

11. With regard to the proposed dispensation in relation to the setting of the Budget and Council Tax, section 106 of the Local Government Finance Act 1992 still applies, which means that any Member who is in arrears of Council Tax of two months or more may must disclose the fact of their arrears and cannot vote on any relevant meeting.

Recommendations:

12. Accordingly, it is recommended that this Committee requests the Monitoring Officer to grant a blanket dispensation for all council Members from 23 January 2013 to 7 May 2013 for the following:

- (a) The approval of the Council's Revenue and Capital Budget and the setting of the Council Tax (unless in arrears as explained in Section 106 of the Local Government Finance Act 1992)
- (b) The approval of any borrowing under the Local Government Act 2003
- (c) The making of calculations under s49A and 49B of the Local Government Finance Act 1992
- (d) The approval of an allowance, payment or indemnity to Members
- (e) A ceremonial honour given to Members

Geoff Wild – Director of Governance and Law

geoff.wild@kent.gov.uk

(01622 694302)

January 2013

DISCLOSABLE PECUNIARY INTERESTS

(as prescribed by regulations)

The descriptions on Disclosable Pecuniary Interests are subject to the following definitions:

“the Act” means the Localism Act 2011

“body in which the relevant person has a beneficial interest” means a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest

“director” includes a member of the committee of management of an industrial and provident society

“land” excludes an easement, servitude, interest or right in or over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income

“M” means a member of the relevant authority

“member” includes a co-opted member

“relevant authority” means the authority of which M is a member

“relevant period” means the period of 12 months ending with the day on which M gives a notification for the purposes of section 30(1), or section 31(7), as the case may be, of the Act

“relevant person” means M or any other person referred to in section 30(3)(b) of the Act (the Member’s spouse, civil partner, or somebody with whom they are living as a husband or wife, or as if they were civil partners).

“securities” means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society

Interest	Description
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as

	<p>a member, or towards the election expenses of M. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.</p>
Contracts	<p>Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority:</p> <p>(a) under which goods or services are to be provided or works are to be executed; and</p> <p>(b) which has not been fully discharged.</p>
Land	<p>Any beneficial interest in land which is within the area of the relevant authority.</p>
Licences	<p>Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.</p>
Corporate tenancies	<p>Any tenancy where (to M's knowledge):</p> <p>(a) the landlord is the relevant authority; and</p> <p>(b) the tenant is a body in which the relevant person has a beneficial interest.</p>
Securities	<p>Any beneficial interest in securities of a body where:</p> <p>(a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and</p> <p>(b) either</p> <p>(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or</p> <p>(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.</p>