

ITEM NO: 4

REPORT TO: STANDARDS COMMITTEE

DATE: 12 March 2013

REPORT OF: Borough Solicitor (Monitoring Officer)

SUBJECT MATTER: LOCALISM ACT 2011 – DISPENSATIONS

REPORT SUMMARY: To advise the Standards Committee in relation to the Monitoring Officer's proposals regarding the grant of dispensations to enable Members of the Council to participate and vote on matters notwithstanding the fact that the Member may have a Disclosable Pecuniary Interest ("DPI"), and to seek the Committee's views on the grant of various dispensations.

RECOMMENDATION(S) That the Standards Committee:

1. Notes the Monitoring Officer's advice to all Council Members to submit a written request for the granting of a dispensation pursuant to Section 33(2)(a) of the Localism Act 2011 ("the Localism Act") allowing them to participate and vote on:
 - (i) Setting the Council Tax or a precept under the Local Government Finance Act 1992 (as amended from time to time or any superseding legislation) and matters directly related to such decisions such as budget calculations.
 - (ii) Allowances, payments or indemnities given to Members of the Council.
2. Provides the Monitoring Officer with the Committee's view as to whether the dispensation referred to at recommendation 1(i) above, should include determining the local council tax reduction scheme and other discounts and premiums pursuant to changes made by the Local Government Finance Act 2012.
3. Provides the Monitoring Officer with the Committee's view as to whether the dispensation referred to at Recommendation 1(ii) above, should include all allowances payable to Council Members (including special responsibility allowances) or only those applying to all or a majority of Members.
4. Considers whether it would be appropriate for the Committee to advise any Members of the Council who are Tenants of Tameside Council to submit a written request for the grant of a dispensation pursuant to Section 33(2)(e) of the Localism Act to allow them to participate and to vote on matters in relation to housing (provided that those functions do not relate particularly to the tenancy or lease of the Council Member concerned).

5. Considers whether the Committee would be minded to grant dispensations to allow any Member of the Council who has a DPI to make representations at a meeting where members of the public have the same entitlement (e.g. to allow a Council Member who is making an application for planning permission to attend to make representations at a meeting of the Speakers Panel (Planning) which is to hear the matter in the same way as a member of the public.

**FINANCIAL IMPLICATIONS:
(Authorised by Borough
Treasurer)**

There are no significant financial issues arising from this Report.

**LEGAL IMPLICATIONS:
(Authorised by Borough
Solicitor)**

These are set out in the Report.

RISK MANAGEMENT:

To comply with legal requirements set out in the Localism Act 2011.

**LINKS TO COMMUNITY
PLAN:**

Support the current arrangements for ethical and corporate governance of the Authority to ensure that the public can have confidence in local government.

ACCESS TO INFORMATION


NON-CONFIDENTIAL

This report does not contain information which warrants its consideration in the absence of the Press or members of the public

REFERENCE DOCUMENTS:

Background Documents:

- a) Chapter 7 of the Localism Act 2011 and the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012.

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1.0 BACKGROUND

- 1.1 The Localism Act and the relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 introduced “Disclosable Pecuniary Interests” and new rules on the grant of dispensations to allow Council Members to take part in or vote on matters in which they have a Disclosable Pecuniary Interest (“DPI”).
- 1.2 Where a Member has a DPI, they cannot speak and/or vote on a matter in which they have such an interest, unless they have obtained a dispensation in accordance with the requirements of Section 33 of the Localism Act.
- 1.3 The grounds for the grant of a dispensation under Section 33(2) of the Localism Act are, if, after having regard to all relevant circumstances, the Council considers that:
 - (a) Without the dispensation the number of Members prohibited from participating/voting 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) 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) The grant of the dispensation would be in the interests of the inhabitants of Tameside.
 - (d) Without the dispensation every Member of the Cabinet would have a DPI prohibiting them from participating/voting in any particular business to be transacted by the Executive.
 - (e) It is otherwise appropriate to grant the dispensation.
- 1.4 At its meeting on 18 September 2012 the Council delegated to the Monitoring Officer the power to grant dispensations on the grounds set out at sub-paragraphs 1.3(a), (b) and (d) above, and delegated to the Standards Committee the power to grant dispensations on the grounds set out at sub-paragraphs 1.3(c) and (e) above, as well as the power to determine appeals against the Monitoring Officer’s decision on the grant of dispensations.
- 1.5 In order to obtain a dispensation on any of the five grounds set out under Section 33 of the Localism Act, a Member must make a written request to the Council’s Monitoring Officer. Any grant of a dispensation must specify how long it lasts for, up to a maximum period of four years.
- 1.6 Previously, the old “national” model code of conduct for Members specifically stated that Members would not have a prejudicial interest in certain circumstances that potentially affected the majority or a large number of Members. These general exemptions included an interest in any business of the Council which related to:
 - (i) housing, where the Member was a tenant of the Council (provided that those functions did not relate particularly to the Member’s own tenancy or lease);
 - (ii) an allowance, payment or indemnity given to Members; and
 - (iii) setting Council Tax or a precept under the Local Government finance Act 1992.
- 1.7 The new arrangements on DPIs introduced by the Localism Act do not reproduce any of the “general exemptions” set out above. The matters listed above are likely to constitute a DPI, which would prevent Members having such an interest from participating in the decision-making process if they do not have a dispensation.

2.0 MONITORING OFFICER'S PROPOSALS

- 2.1 Most or all Members are likely to have a pecuniary interest in relation to the setting of the Council Tax through their ownership/occupation of property in Manchester, and similarly most or all Members are likely to have or potentially have a pecuniary interest in most decisions relating to the Members' Allowances Scheme or general indemnities given to Members. In the Monitoring Officer's opinion, the transaction of business relating to these matters would be impeded unless a dispensation were granted.
- 2.2 In these circumstances, the Monitoring Officer is minded in the exercise of her delegation to grant dispensations to allow members to participate in and vote on:
- (i) the setting of the Council Tax or a precept (and matters directly related to such decisions including the budget calculations);
 - (ii) allowances, payments and indemnities given to Members.
- 2.3 As there is a requirement that there should be a written request by the Member before dispensations are granted, the Monitoring Officer intends to advise all Members to submit a request for dispensation in respect of the above matters.

3.0 VIEWS OF THE STANDARDS COMMITTEE

The Monitoring Officer seeks the views of the Standards Committee in relation to the following matters:

- 3.1 Whether the dispensation that the Monitoring Officer proposes to grant in relation to setting the Council Tax or a precept under the Local Government Finance Act 1992 should include determining the local council tax reduction scheme and other discounts and premiums pursuant to changes made by the Local Government Finance Act 2012.
- 3.2 Whether the dispensation that the Monitoring Officer proposes to grant in relation to allowances, payments or indemnities given to Members of the Council should include all allowances payable to Council Members (including special responsibility allowances) or only those applying to all or a majority of Members.
- 3.3 As previously noted, Members had a general dispensation under the old standards regime in relation to interest in any function of the Council which related to "housing, where the Member was a tenant of the Council (provided that those functions did not relate particularly to the Member's own tenancy or lease)". This general dispensation no longer applies under the new arrangements. If a dispensation were to be granted, the decision would rest with the Standards Committee rather than the Monitoring Officer it is understood that as only a minority of Members are now tenants of the Council. The Committee is asked to consider whether it would be appropriate for the Committee to advise any Members who are Tenants of the Council to submit a written request to the Committee for the grant of a dispensation pursuant to Section 33(2)(e) of the Localism Act to allow them to participate and to vote on matters in relation to housing (provided that those functions do not relate particularly to the tenancy or lease of the Council Member concerned). The Committee may take a different view in relation to matters of general housing policy (e.g. the Council's Housing Allocations Scheme) from specific financial matters (e.g. whether to raise rents payable by Council tenants).
- 3.4 Under the old standards regime, a Member with a prejudicial interest in a matter (say a planning application) was allowed to attend a public meeting of the Council or a Committee for the purpose only of making representations, answering questions or giving evidence, provided that the public were also allowed to attend the meeting for the same purpose. Under the new arrangements this is no longer allowed where there is a DPI and Members

are therefore in a worse position than an ordinary member of the public in this respect. The Committee is asked to consider whether it would be appropriate for the Committee to grant a dispensation to allow any Members who have a DPI to participate in a meeting in the same way as members of the public (e.g. to allow a Member who is making an application for planning permission to attend to make representations at the meeting of the Council's Planning Committee which is to hear the matter). The grounds on which the Standards Committee would grant such a dispensation would be those set out at sub-section 33(2)(e) of the Localism Act (i.e. it is "otherwise appropriate to grant a dispensation" on the basis of fairness to the Council Member).