

REPORT TO:	STANDARDS COMMITTEE
DATE:	17 November 2020
REPORT OF:	Sandra Stewart – Executive Director Governance & Resources (Monitoring Officer)
SUBJECT MATTER:	GENERAL DISPENSATION FOR MEMBERS
REPORT SUMMARY:	This report invites the Committee to readopt the existing range of standard dispensations available to Members in discharging Council functions in accordance with the Localism Act 2011 and the Members' Code of Conduct.
RECOMMENDATION(S)	<p>The Committee is asked to:</p> <p>(i) Delegate authority to the Borough Solicitor to, upon application by Members, grant a dispensation for four years from the date of this Committee, for Members to participate and vote in the following matters, irrespective of them otherwise having a pecuniary interest:</p> <ul style="list-style-type: none"> (a) school meals or school transport and travelling expenses, where the Member is a parent or guardian of a child in full time education, or are a parent governor of a school, unless the matter 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 the Member is in receipt of, or is entitled to the receipt of, such pay; (c) an allowance, payment or indemnity given to Members; (d) any ceremonial honours given to Members; and (e) setting council tax or a precept under the Local Government Finance Act 1992. <p>(ii) Note that such dispensation does not relieve the Member of the obligation to declare the interest or have such interest registered in accordance with the Members' Code of Conduct and the expectation is it will be produced in the form at Appendix A and declared at the meeting.</p>
FINANCIAL IMPLICATIONS: (Authorised by Borough Treasurer)	There are no significant financial issues arising from this Report.
LEGAL IMPLICATIONS: (Authorised by Borough Solicitor)	As set out in the report.
RISK MANAGEMENT:	Standards Committees should be aware of the National position in order that consistency of approach is taken in respect of setting and advising on local ethical and standard issues.
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:

The background papers relating to this report can be inspected by contacting the report writer, Sandra Stewart, the Council's Borough Solicitor and statutory Monitoring Officer by:



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1. PURPOSE OF REPORT

- 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”). 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. 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:
- 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.
 - 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.
 - The grant of the dispensation would be in the interests of the inhabitants of the borough.
 - Without the dispensation every Member of the Executive would have a DPI prohibiting them from participating/voting in any particular business to be transacted by the Executive.
 - It is otherwise appropriate to grant the dispensation.
- 1.2 Any grant of a dispensation must specify how long it lasts for, up to a maximum period of four years. 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 setting Council Tax or a precept under the Local Government Finance Act 1992. The new arrangements on DPIs introduced by the Localism Act do not reproduce any of the “general exemptions”.
- 1.3 Members are required to declare under the Localism Act 2011 (‘the Act’) and Members’ Code of Conduct (‘the Code’) their disclosable pecuniary interests in relation to matters discussed at formal Council meetings. Ordinarily when this situation arises a Member will:
- (a) declare the interest at the meeting;
 - (b) ensure the interest is registered on the Members’ Register of Interests;
 - (c) withdraw from the meeting and not take part in any discussion or in a vote on the matter; and
 - (d) not take any steps or any further steps in relation to the matter (except where a Cabinet Member acting in a single Member capacity is required to pass the matter to another Member).
- 1.4 The Act also gives the Council the power to grant dispensations from the prohibition on Members participating in or voting on those matters where they have a disclosable pecuniary interest. In November 2016 the Standards Committee agreed dispensations in certain categories for a four-year period ending on 17 November 2020.
- 1.5 This report seeks the agreement of the Standards Committee to grant in principle (because of the statutory mechanism) a dispensation to all Members for the same categories of otherwise disclosable pecuniary interests for a further four-year period.
- 1.6 Such dispensations do not relieve the Member of the obligation to declare and register such interests, although on those occasions where something impacts on a majority of Members, the Borough Solicitor will usually make that declaration on behalf of all those affected Members.

2. THE 2012 DISPENSATION

- 2.1 The 2007 Model Code of Conduct included a general dispensation for Members from having a prejudicial interest for specific business of the Council when discharging its functions relating to:
- (a) housing (except where a member's individual tenancy is affected);
 - (b) school meals or school transport and travelling expenses (for parents of children at local schools and parent governors of local schools);
 - (c) statutory sick pay (where a councillor is in receipt);
 - (d) councillors' allowances and ceremonial honours given to councillors; and
 - (e) setting council tax.
- 2.2 When the local government standards regime was changed in 2012, the Act prescribed no set categories of dispensation for Members. Noting that there was some debate as to whether all of the categories prescribed in the 2007 Model Code were strictly speaking pecuniary interests, and that taking part in an item whilst having a pecuniary interest is a criminal offence, the Committee in November 2012 agreed to permit dispensations for the same categories as in the 2007 Model Code. So for example, while the relevance of having a dispensation for statutory sick pay seems unclear, considering it was in the Model Code, and there is a sickness payment element to the Members' allowances scheme it seems appropriate to continue to include it.
- 2.3 The GM Chief Lawyers considered that the rationale for the blanket dispensation under the 2007 Model Code remained relevant in granting the existing dispensation, particularly noting that:
- (a) although these are decisions that may impact on Members' private interests and therefore may theoretically affect Members' views, there is no strong reason to deviate from the same conclusion for the 2007 Code, namely that for these issues it is overall in the public interest that Members participate in such decisions;
 - (b) these are important decisions affecting the borough and it is important that as many Members are able to participate and represent their constituents as possible, especially as most of the decisions are reserved for full Council.
- 2.4 The Act specifies a number of grounds on which a dispensation may be granted. In reapplying the 2007 Model Code dispensations it was felt that two of those grounds applied, namely that the authority:
- (a) "Considers that granting the dispensation is in the interests of persons living in the authority's area;"
 - (b) "Considers that it is otherwise appropriate to grant a dispensation."
- 2.5 It was however considered advisable to caveat some of the provisions to ensure Members cannot participate in decisions where their individual interest is the subject matter of the decision, for example their tenancy or lease.
- 2.6 The Committee also noted that Members may voluntarily choose not to participate in a decision even where they have a relevant dispensation.
- 2.7 Taking into account of the above, it was considered that granting the dispensation for the categories under the 2007 Model Code, with minor revisions, represented a reasonable balance between democratic decision making and probity. The Committee therefore agreed to grant the dispensation for four years – the maximum permitted time allowed under the Act – as follows:
- (a) housing (except where a member's individual tenancy is affected);
 - (b) school meals or school transport and travelling expenses, where the Member is a parent or guardian of a child in full time education, or are a parent governor of a school, unless the matter relates particularly to the school which the child attends;

- (c) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where the Member is in receipt of, or are entitled to the receipt of, such pay;
- (d) an allowance, payment or indemnity given to Members;
- (e) any ceremonial honours given to Members;
- (f) setting council tax or a precept under the Local Government Finance Act 1992.

3. COUNCIL TAX SETTING AND DISPENSATIONS

- 3.1. In 2013, the Government issued guidance on whether a Member has a pecuniary interest in respect of setting the Council Tax or a precept. This specifies that:

“Any payment of, or liability to pay, council tax does not create a disclosable pecuniary interest as defined in the national rules; hence being a council tax payer does not mean that you need a dispensation to take part in the business of setting the council tax or precept or local arrangements for council tax support.”

- 3.2. While therefore it is not necessary to apply for the dispensation in order for Members to discuss and vote upon Council Tax, as there is ambiguity in the legislation which necessitated the Government guidance, it is considered advisable to continue to include the setting of Council Tax or any precept as one of the dispensation categories for the avoidance of doubt.

4. THE 2020 DISPENSATION

- 4.1. It is felt that the above reasons and grounds for these current categories of dispensation remain relevant, and therefore it is proposed to readopt them, as in November 2016, for a further four year period.

5. APPLICATIONS FOR DISPENSATIONS

- 5.1. The Act does not allow a blanket dispensation to be granted by a local authority, only citing individual members seeking dispensations as follows:

“A relevant authority may, on a written request made to the proper officer of the authority by a member or co-opted member of the authority grant a dispensation relieving the member of co-opted member from either or both of the restrictions in section 31(4) (being that on having a pecuniary interest the member can neither take part or vote and as a result of our standing orders must leave the room) in cases described in the dispensation.”

- 5.2. As technically no written request from a Member is being presented, the Committee cannot directly grant the dispensation to Members; this is the same position as in 2012. It is therefore recommended that the same mechanism be used for granting the dispensation, namely that the Committee grants delegated authority to the Borough Solicitor to grant the dispensation for the categories specified, upon application by individual Members.
- 5.3. A dispensation may be granted for up to 4 years and it is suggested the renewed dispensation be granted for the full 4 year period, subject to any further decisions on dispensations or review of this decision by the Committee.
- 5.5. For clarity any Member seeking a dispensation to vote and participate on any matter where they have a disclosable pecuniary interest not covered under the categories agreed by the Committee, would have their case referred to the Borough Solicitor for a decision.

6. DISPENSATIONS GIVEN TODATE

- 6.1 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 Tameside in common with any resident of the Borough or indeed anyone who stands as a Councillor. In the Monitoring Officer's opinion, the transaction of business relating to these matters would be impeded unless a dispensation was granted.
- 6.2 In these circumstances, the Monitoring Officer has over the last 8 years granted dispensations to all members to allow members to participate in and vote on the setting of the Council Tax or a precept (and matters directly related to such decisions including the budget calculations). It will be necessary for all councillors to apply for dispensations to take part in the meeting at Full Council.
- 6.3 The only dispensations in the last 8 years have been awarded only for setting Council tax using the form attached at **Appendix A** on an annual basis.

7. RECOMMENDATIONS

- 7.1 As set out on the front of the report.