
**Manchester City Council
Report for Resolution**

Report to: Standards Committee – 15 June 2017

Subject: Localism Act 2011 – Dispensations

Report of: City Solicitor

Purpose of the Report

This report advises the Standards Committee of the Monitoring Officers 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 previous dispensations.

Recommendations

That the Standards Committee:

1. Notes the Monitoring Officer's proposal to advise all Council Members to submit a written request through their Group Leaders or, in the case of members not in a group, the City Solicitor, for the grant 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 in paragraph 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 in paragraph 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 Manchester City Council to submit a written request for the grant of a dispensation to allow them to participate and vote on matters in relation to housing (provided that those functions do

not relate particularly to the lease or tenancy of the Council Member concerned).

5. Considers whether the Committee would be minded to grant dispensations to allow any Member 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 and make representations at a meeting of the Council's Planning Committee which is to hear the matter, in the same way as a member of the public).

Wards Affected

All

Financial Consequences – Revenue and Capital budgets

None directly

Implications for:

Anti Poverty	Equal Opportunities	Environment	Employment
No	No	No	No

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Background documents (available for public inspection):

The following documents disclose important facts on which the report is based and have been relied upon in preparing the report. Copies of the background documents are available up to 4 years after the date of the meeting. If you would like a copy please contact one of the contact officers above.

1. Report of the City Solicitor to the Constitutional and Nomination Committee on 11 July 2012;
2. Report of the City Solicitor to the Standards Committee on 19 November 2012
3. Report of the City Solicitor to the Standards Committee on 14 January 2013.

1.0 Introduction

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 decisions 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 in or voting on any particular business would be so great a proportion of the body transacting the business as to impede the transaction of that 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 Manchester.
- (d) 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.
- (e) It is otherwise appropriate to grant the dispensation.

1.4 At its meeting on 19 July 2012 the Council delegated to the Monitoring Officer 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 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 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 Manchester City 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 the council tax or a precept under the Local Government Finance Act 1992

The 'new' (or current) 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.

1.7 In February 2012, the Parliamentary Under Secretary of State wrote to all Local Authority Leaders in relation to this issue and stated:

'some council monitoring officers are informing their councillors that being a council tax payer is a disclosable interest in any budget debate. Councillors are then informed that they would be committing a criminal offence if they speak or vote in that debate unless they obtain a formal dispensation.

.....in our opinion, such dispensations are unnecessary'

However this is not statutory guidance and has not been tested in court.

In order to ensure that the council is acting lawfully and to protect the position of all councillors it was decided that it was necessary to reinstate the exemption by granting dispensations.

This approach has been taken by the majority of Local Authorities who have been consulted on this issue.

2.0 Background

2.1 The Standards Committee on the 14th January 2013 resolved:

- 1. To note the Monitoring Officer's proposal to advise all Council Members to submit a written request through their Group Leaders or Group Secretaries for the grant 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. To advise the Monitoring Officer that the dispensation referred to at paragraph 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. To advise the Monitoring Officer that the dispensation referred to at paragraph 1(ii) above should include all allowances payable to Council Members (including special responsibility allowances).
 4. To advise the Monitoring Officer that the two dispensations referred to in paragraph 1 above should be for a period of four years.
 5. To agree that it is appropriate for any Members of the Council who are tenants of Manchester City Council to be granted 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). Such requests should be submitted in writing to the Monitoring Officer.
 6. To agree that it is appropriate for dispensations to be granted 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 Council's Planning Committee which is to hear the matter in the same way as a member of the public), and that Members be advised of the importance of declaring their interest at any meeting where this applied and making it clear that they are making representation in their personal capacity rather than in their role as a councillor. Such requests should be submitted in writing to the Monitoring Officer.
- 2.1 As stated above, any dispensation granted can only last for four years. It is therefore appropriate that the Committee review the decision and recommend to the Monitoring Officer whether to renew and confirm the dispensations previously granted or to suggest any amendments to the dispensations.
 - 2.2 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.

- 2.3 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:
- (a) the setting of the Council Tax or a precept (and matters directly related to such decisions including the budget calculations)
 - (b) allowances, payments and indemnities given to Members.
- 2.4 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 through their Group Leaders, or in the case of members who are not in a group, the City Solicitor, a 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 previous standards regime in relation to interests 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 current arrangements.

There is now very little housing owned by the Council although some specialised facilities do remain. If a dispensation were to be granted, the decision would rest with the Standards Committee rather than the Monitoring Officer as only very few of Members are likely to be tenants of Manchester City 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 previous 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 current arrangements this is no longer allowed where there is a DPI and Members are therefore in a less favourable 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 in this subsection.

This approach has been taken by other Councils as it is considered that a Member would be disadvantaged and have less rights and be more disadvantaged than a member of the public.

Recommendations

1. Members are asked :
 - to consider this report and review whether the dispensations granted should be renewed for a further four years.
 - if appropriate suggest any amendments to the dispensations granted.
2. That the Standards Committee:
 - Notes the Monitoring Officer's proposal to advise all Council Members to submit a written request through their Group Leaders or Group Secretaries for the grant 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

- Provides the Monitoring Officer with the Committee's view as to whether the dispensation referred to at paragraph 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.
- Provides the Monitoring Officer with the Committee's view as to whether the dispensation referred to at paragraph 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.
- Considers whether it would be appropriate for the Committee to advise any Members of the Council who are tenants of Manchester City Council to submit a written request for the grant of a dispensation to allow them to participate and vote on matters in relation to housing (provided that those functions do not relate particularly to the lease or tenancy of the Council Member concerned).
- Considers whether the Committee would be minded to grant dispensations to allow any Member 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 and make representations at a meeting of the Council's Planning Committee which is to hear the matter in the same way as a member of the public).