

To: Standards Committee
Date: 11 September 2018
Report of: Monitoring Officer / Head of Law and Governance
Title of Report: Dispensations - Localism Act 2011, Section 33

Summary and recommendations	
Purpose of report:	This report proposes that the Committee recommends Full Council to approve a number of general dispensations under the Localism Act 2011; such dispensations to remain in force for a period of four years; in the interest of good governance and the effective conduct of public affairs.
Key decision:	No
Recommendation:	
That the Standards Committee recommends Full Council to:	
<p>a) approve, under Section 33 of the Localism Act 2011, the general dispensations, listed at paragraph 4 of this report, for all elected and co-opted Members of Oxford City Council;</p> <p>b) agree that those general dispensations should remain in force for a period of four years; and</p> <p>c) agree that the granting of individual dispensations under Section 33 of the Localism Act 2011 be delegated to the Monitoring Officer.</p>	

Introduction and background

1. The Localism Act 2011 ('the Act') made significant changes to the Standards regime. Under the Act the Council has a statutory duty to promote and maintain high standards of conduct by both its Elected Members and co-opted Members. The Council must also adopt a Code of Conduct setting out the conduct expected of elected and co-opted Members whenever they act in their official capacity as a Member.
2. On 23 May 2012 the Council introduced new arrangements for a non-statutory Standards Committee and adopted a Member Code of Conduct ('the Code of Conduct') which was compliant with the Act. The terms of reference of the Standards Committee are detailed at section 7.8 of the Council's Constitution and include the following provision:

(d) Considering requests from councillors for dispensation from being precluded from participation in a meeting

3. The Act prevents Members from participating in any business of the Council where they have a Disclosable Pecuniary Interest (DPI) unless they have sought a dispensation under Section 33 of the Act. Applications must be made in writing and dispensations may be sought for a period of up to four years. Dispensations may be sought on the following grounds:
 - a) That so many Members of the decision making body have a disclosable pecuniary interest in a matter that the business of the meeting would be impeded
 - b) Without a dispensation the representation of different political groups on the body would be so upset as to alter the outcome of any vote
 - c) The dispensation is in the interests of persons living in the area
 - d) No Member of the Cabinet would be able to participate on the matter without a dispensation
 - e) It is otherwise appropriate to grant a dispensation

General dispensations

4. It is proposed that general dispensations to speak and vote on the following items are granted to all Oxford City Council Members and co-opted Members and that those dispensations will remain in force until the next Council elections:
 - Determining an allowance (including special responsibility allowances), travelling expense, payment or indemnity given to Members
 - Housing: where the Member (or spouse or partner) holds a tenancy or lease with the Council as long as the matter does not relate to the particular tenancy or lease of the Member (their spouse or partner);
 - Housing Benefit: where the Councillor (or spouse or partner) receives housing benefit;
 - Any Ceremonial Honours given to Members;
 - Setting the Council Tax or a precept under the Local Government and Finance Act 1992 (or any subsequent legislation); and
 - Setting a Local Council Tax Reduction Scheme or Local scheme for the payment of business rates (including eligibility for rebates and reductions) for the purposes of the Local Government Finance Act 2012 (or any subsequent legislation)

Council Tax

5. Guidance issued by the Department for Communities and Local Government (DCLG) in 2012 (updated September 2013): Openness and transparency on personal interests states 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.

If you are a homeowner or tenant in the area of your council you will have registered, in accordance with the national rules, that beneficial interest in land. However, this disclosable pecuniary interest is not a disclosable pecuniary interest in the matter of setting the council tax or precept since decisions on the council tax or precept do not materially affect your interest in the land. For example, it does not materially affect the value of your home, your prospects of selling that home, or how you might use or enjoy that land.

Accordingly, you will not need a dispensation to take part in the business of setting the council tax or precept or local arrangements for council tax support, which is in any event a decision affecting the generality of the public in the area of your council, rather than you as an individual."

6. In summary the DCLG view was that Members did not need a dispensation to take part in the business of setting the council tax or precept or local arrangements for council tax support because this is a decision affecting the generality of the public in the area rather than Members as individuals.
7. The dispensation for council tax relates to a Member's DPI and does not affect a Member's obligation under Section 106 of the Local Government Finance Act 1992 to declare and not vote if they are 2 months or more in arrears with their council tax when voting on setting the Council's budget.
8. Historically the Council has relied on this DCLG guidance and has not sought dispensations for Members to take speak and vote on matters relating to council tax. However, as the DCLG guidance is not statutory and has not been tested in court the Monitoring Officer considers it prudent and transparent to include council tax in the general dispensation.

Delegation to the Monitoring Officer

9. The Standards Committee has not considered any applications for dispensation by individual Members since the introduction of these new arrangements in 2012. In all likelihood this is because there have been no instances when a dispensation was required. However, it is possible that no formal applications have been submitted due to the length of time required to convene a meeting of the Standards Committee to consider and determine any such application and that some applications for a dispensation have stalled or been withdrawn due to lack of time. This is frustrating for Members and for officers trying to implement the rules and convening an urgent meeting of the Standards Committee to consider any such application is not a good use of Council resources or in the public interest.
10. To address this specific concern about the timely consideration of an application for dispensation it is recommended that the granting of dispensations to an individual member under Section 33 of the Act be delegated to the Monitoring Officer.
11. Such delegation would operate on the following basis:
 - The Monitoring Officer would be the sole decision taker but would act in consultation with one independent member and
 - The delegation would apply to applications from an individual Member whereas groups of Members seeking the same dispensation for the same

meeting (for example from several members of City Executive Board) would still be required to seek dispensation from the Standards Committee.

Legal implications

12. Any legal implications arising from the legislation (The Localism Act 2011, Section 33) are set out in the body of this report.

Financial implications

13. None.

Risk management

14. Not putting in place the recommended general dispensations would mean that every Member would need to apply for a personal dispensation when the relevant matters arose. Not putting in place the recommended delegation would mean that it might not be possible for applications for a personal dispensation to be considered and acted upon in a timely manner. This would not be an efficient use of the Council's resources or in the public interest.

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