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# Request for Dispensation - Summary Report

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<b>Committee considering report:</b>	Special Governance and Ethics Committee
<b>Date of Committee:</b>	08 February 2016
<b>Report Author:</b>	David Holling
<b>Forward Plan Ref:</b>	N/a

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## 1. Purpose of the Report

- 1.1 The Governance and Ethics Committee is asked to consider an application for a dispensation from Councillor Lynne Doherty to speak and vote at Executive and Council meetings where the 2016/17 budget is discussed.

## 2. Recommendation

- 2.1 Members are asked to consider and if appropriate agree the request for a dispensation

## 3. Implications

- 3.1 **Financial:** None identified
- 3.2 **Policy:** The issues set out in this report are covered in the previously agreed protocol for granting Dispensations under the Localism Act 2011.
- 3.3 **Personnel:** None
- 3.4 **Legal:** The Council adopted processes in regard to dispensations comply with the Localism Act 2011.
- 3.5 **Risk Management:** The recommendations set out in this report do not constitute a significant risk to the Council.
- 3.6 **Property:** None
- 3.7 **Other:** None

## 4. Other options considered

- 4.1 As set out in the report

## Executive Summary

### 1. Introduction

- 1.1 Regulations came in to force on 01 July 2012 following the introduction of the Localism Act 2011. Section 33 of these regulations prescribes the circumstances in which the Governance and Ethics Committee, Sub-Committees and the Monitoring Officer may grant dispensations to Councillors to speak and/or vote at a meeting in which they have a Disclosable Pecuniary Interest under Section 31 of the Act. If a Member acts in accordance with the granting of such a dispensation, any participation in business prohibited by the mandatory provisions of the Code of Conduct is not a failure to comply with the authority's Code.
- 1.2 These regulations refer to the circumstances where a Councillor, finds they are in a position where they have to declare a disclosable pecuniary interest under the Code of Conduct which would ordinarily then require them to leave the meeting. These councillors might be able to obtain a dispensation (permission) from the Governance and Ethics Committee, Sub-Committee or Monitoring Officer to stay in the meeting after declaring the interest and either speak or speak and vote according to any dispensation granted.
- 1.3 The Governance and Ethics Committee, Sub-Committee or Monitoring Officer may grant a dispensation to a Member in the following circumstances:
  - (i) that so many Members of the decision making body have Disclosable Pecuniary Interests in a matter that it would "impede" the transaction of the business of that body. [In practice this means the decision making body would be inquorate as a result.]
  - (ii) that without the dispensation the representation of different political groups on the body transacting the business would be such as to alter the outcome of the vote on that particular matter.
  - (iii) that the authority considers that the dispensation is in the interests of persons living in the authority's area.
  - (iv) that without a dispensation no Member of the Executive would be able to participate in a particular matter. They suggest that where the Executive would be inquorate as a result then the particular decision could be dealt with by an individual Member of the Executive. It may be necessary to make provision in the Scheme of Delegation to enable this to occur although it does appear to be an unlikely event.
  - (v) that the Council considers that it is "otherwise appropriate" to grant a dispensation. This is a particularly wide provision as to some extent is (iii) above.
- 1.4 It is considered that grounds (i) and (iv) are objective and it is recommended that dispensations on these grounds are delegated to the Monitoring Officer with an appeal to the Governance and Ethics Committee.
- 1.5 Grounds (ii), (iii) and (v) are rather more complex and subjective and it is considered appropriate that the discretion to grant dispensations on these grounds

remains with Governance and Ethics Committee after consultation with the Independent Person.

1.6 In this instance it is considered that grounds iii) and v) may be applicable

## **2. Request to Grant Dispensation**

2.1 Requests for dispensations must:

- (a) be made in writing
- (b) be made to the Proper Officer of the Council
- (c) be made by an individual Member or Co-Opted Member of the authority

2.2 The information below was submitted to the Monitoring Officer and explains the written request which has been made by Councillor Doherty for a dispensation to enable her to take part in a debate and/ or vote upon a matter.

2.3 Councillor Doherty's employer is a recipient of the Short Breaks Funding that forms one line within the Phase 1 Budget Consultation for the entire budget. The amount equates to 0.00007% of the total savings put forward within the budget.

2.4 Councillor Doherty has stated that she would like to participate fully in the discussion as she feels that as the Portfolio Holder for this particular area she brings a degree of expertise and knowledge that other Members may not have should this area become part of the debate.

## **3. Considerations in granting a dispensation**

3.1 The Governance and Ethics Committee should take the following into consideration when determining whether or not a dispensation should be granted:

- (i) they should weigh up the effect of Members' disclosable pecuniary interest against the outcome of the vote if they are not participating in the vote.
- (ii) they should consider whether the nature of the interest in question is such that public confidence in the authority would be damaged if that Member were allowed to vote.
- (iii) they should look at whether the interest in question is one that is common to both the Member and to a significant proportion of the population.
- (iv) account should also be taken of the expertise and knowledge of the Member and whether this justifies their participation in the item in question. For example, if members of Police and/or Fire authorities would be able to bring their expertise by addressing the meeting.
- (v) Governance and Ethics Committee Members should have regard to whether the business in question relates to a voluntary or public body which is to be considered by the Overview and Scrutiny Management Commission, and additionally whether the interest is a financial one.
- (vi) if a dispensation not being granted would mean the meeting was not quorate, this might be a reason to grant the dispensation.

## **4. Procedure**

1. The Governance and Ethics Committee should consider the implications for the dispensation set out at 3.1 above. This consideration may also take account of any other relevant circumstances or local criteria.

2. The Governance and Ethics Committee should determine the nature of any dispensation they are minded to grant:
  - (a) whether the applicant can speak and not vote; or
  - (b) whether the applicant can participate fully and vote.
3. The Committee can also decide the length of the dispensation (not more than four years). In this instance the applicant has asked that the dispensation be granted for all meetings where the 2016/17 budget is discussed.
4. The regulations do not allow for the Governance and Ethics Committee to grant a general dispensation to cover any situation where a disclosable pecuniary interest may arise.
5. If the Committee grants a dispensation it should do so in writing and before the meetings in question are held.
6. The Governance and Ethics Committee may decide to refuse an application for a dispensation. This is within their discretion under the regulations.
7. A written record of the decision taken must be kept and placed with the Register of Interests maintained under Section 81(1) of the Local Government Act 2000.

## 5. Recommendation

- 5.1 While the Monitoring Officer has the ability to consider a request for a dispensation in certain circumstances this is not one which the Monitoring Officer considers to fall within his remit. The Monitoring Officer considers that this request would fall within criterion(iii) and (v) that the Council considers the request is in the interests of persons within its area and may be 'otherwise appropriate'
- 5.2 The Monitoring Officer advises that it is the Members employer which receives some short breaks funding and the overall amount is a small proportion of the overall budget. Councillor Doherty also brings some knowledge of the arrangements in her role as Portfolio Holder which may be of assistance to Members of Council generally should there be debate on this particular line of the Budget. It is not considered that Councillor Doherty has a disclosable pecuniary interest but at best an 'other interest' under the Council's Code of Conduct.
- 5.3 Should the Committee be minded to grant a dispensation in this instance it is recommended that it should be limited to meetings of the Executive and Council at which the 2016/17 Budget is discussed only.
- 5.4 All three Independent Persons were consulted:
  - i) Lindsey Appleton stated that 'Having read the attached, I would agree with the Monitoring Officer's view in that it is the employer of Cllr Doherty that receives the funding and I feel that the generic knowledge that Cllr Doherty possesses as portfolio holder, could potentially aid discussions.

I would therefore agree that Cllr Doherty has no disclosable pecuniary interest in this matter."

- ii) James Rees – made no comment on the request
- iii) Mike Wall stated that ‘My personal view is not to grant on the grounds of perception. However, under the rules we work by dispensation can be given and I am content that it is granted in this instance. The dispensation should be to speak but not vote.’

5.5 The Governance and Ethics Committee is asked to determine:

- (a) whether a dispensation should be granted;
- (b) if they are minded to grant a dispensation :
  - (i) whether the applicant can speak and not vote; or
  - (ii) whether the applicant can participate fully and vote
- (c) if they are minded to grant a dispensation how long they are willing to grant the dispensation for.

## **6. Appendices**

There are no appendices to this report