
Request for Dispensation - Summary Report

Committee considering report: Virtual Governance and Ethics Committee (Virtual)

Date of Committee: 17 February 2016

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Forward Plan Ref: N/a

1. Purpose of the Report

1.1 The Governance and Ethics Committee is asked to consider an application for a dispensation from Councillor Marcus Franks to speak and vote at Full Council and Executive meetings where the 2016/16 budget is discussed.

2. Recommendation

2.1 Members to consider and if appropriate r 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 Franks for a dispensation to enable him to take part in a debate and vote upon a matter.

2.3. Councillor Franks requested a dispensation to speak and vote at Executive and Full Council meetings where the 2016/17 budget was discussed as his employer, Sovereign Housing Association would be affected by the proposal to withdraw West Berkshire Councils contribution to the Neighbourhood Warden Scheme.

2.4. It should be noted that the total grant the Council gives to Sovereign Housing towards the Warden Scheme is £208k. The current proposal is to withdraw all of this funding and that this would cease on the 01st April 2016.

2.5. Councillor Franks's Register of Interest Form on the website states that Sovereign Housing is his employer but does not set out his job title. Councillor Franks has confirmed his job title as Community Investment Co-ordinator.

2.6. Councillor Franks is the Portfolio Holder for Partnerships, Equality, Community Safety, Environmental Health, Trading Standards, Waste and Customer Services.

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 Council and Executive 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 criteria(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 the Councillor's interest arises as a result of his employment with a body whose funding may be affected by decisions of the Council. Councillor Franks has a good deal of knowledge and experience in this area and his participation may assist the Council in its decision making but members need to determine whether his proximity to his employer is such that members of the public would consider the public interest would not be served. The granting or otherwise of a dispensation will not impact on the quorum for Executive or Council.
- 5.3. All three Independent Persons were consulted.

- i) Lindsey Appleton stated that Councillor Franks, “as Community Investment Co-ordinator would be too close to this subject and I feel he potentially has a conflict of interest. His proximity to the employer and indeed, the role he has there, is such that he could not be deemed impartial and therefore the public interest would not be served. I acknowledge he may have good knowledge and experience but feel public perception may be that a conflict exists. I would therefore be minded to not grant a dispensation.
- ii) James Rees commented that the community would benefit from Councillor Franks’ input into the discussion and therefore he should be permitted to speak BUT not vote at Council and Executive meetings where the 2016/17 budget was discussed.
- iii) Mike Wall was of the view that Councillor Franks should be able to speak BUT not vote at Council and Executive meetings where the 2016/17 budget was discussed.

5.4. The Governance and Ethics Committee is asked to determine:

- 1. whether a dispensation should be granted;
- 2. 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
- 3. if they are minded to grant a dispensation how long they are willing to grant the dispensation for.

5. Appendices

There are no appendices to this report