

GRANT OF DISPENSATIONS UNDER THE MEMBERS' CODE OF CONDUCT

To: Constitution & Ethics Committee

Meeting Date: 15th September 2015

From: LGSS Director of Law, Property and Governance (CCC Monitoring Officer)

Electoral division(s): All

Purpose: At its meeting held on 23rd June 2015, the Committee requested that the proposed amendment to the Members' Code of Conduct in respect of dispensations must be revised to permit requests for dispensations to be submitted orally in exceptional circumstances. This report advises that the Localism Act 2011 provides that requests for dispensations should be in writing and invites the Committee to approve the revised Members' Code of Conduct at Appendix 1.

Recommendation: It is recommended that the Committee

1. Note that Section 33 (1) of the Localism Act 2011 requires that requests for dispensations must be in writing.
2. Recommend to Full Council that:-
 - (a) amendments be made to the Members' Code of Conduct to permit the grant of dispensations to Members as set out in Appendix 1;
 - (b) the Monitoring Officer be authorised to grant dispensations under the Members' Code of Conduct; and
 - (c) the Monitoring Officer, in consultation with the Chairwoman of the Constitution and Ethics Committee, be authorised to make any other minor or consequential amendments to the Constitution necessary for, or incidental to, the implementation of these proposals.

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1. BACKGROUND

- 1.1. At its meeting held on 23rd June, the Committee considered a report outlining proposed amendments to the Members' Code of Conduct to provide for dispensations to be granted to Members in certain circumstances, under Section 33 of the Localism Act 2011 (the "Act"). Such dispensations may enable a Member to participate and vote on matters, notwithstanding the fact that he/she may have a disclosable pecuniary interest in the matter under consideration.
- 1.2. It was noted that the right to a dispensation arises by statute, whether or not the requirement is included in the Members' Code of Conduct. However it was noted that it is advisable to make provision for such dispensations within the Code.
- 1.3. During discussion on the report, Members questioned what would happen if a matter in which a Member had a disclosable pecuniary interest was to arise during the course of a meeting and whether such a Member would be able to speak without a written dispensation. It was noted that a last minute request to speak could put the Monitoring Officer in a difficult position and that any such provision should be used in exceptional circumstances only and at the Monitoring Officer's discretion. The Committee therefore requested that the Code of Conduct be amended to provide that in exceptional circumstances, at the Monitoring Officer's discretion, a Member might be granted a dispensation to speak on a matter in which he or she has a disclosable pecuniary interest without giving prior written notice.
- 1.4. The Committee's request has now been reviewed and Members are advised that section 33 (1) of the Act provides that a relevant authority may, on a written request made to the proper officer of the authority, grant a dispensation. The statute does not therefore permit an oral request to be made for dispensation.
- 1.5. Members are reminded that the power to grant a dispensation arises only in specific circumstances where the local authority (or Monitoring Officer, where delegated), on having regard to all the relevant circumstances considers that:-
 - 1.5.1. without the dispensation the number of persons prohibited by section 31(4) of the Act from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business;
 - 1.5.2. 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,
 - 1.5.3. granting the dispensation is in the interests of persons living in the authority's area;
 - 1.5.4. if it is an authority to which Part 1A of the Local Government Act 2000 applies and is operating executive arrangements, considers that without the dispensation each member of the authority's executive would be prohibited by section 31(4) of the Act from participating in any particular business to be transacted by the authority's executive; or
 - 1.5.5. considers that it is otherwise appropriate to grant a dispensation.

- 1.6. Given that a dispensation may only be granted in the specific circumstances set out above, it is likely that any need to request a dispensation can be anticipated in advance of the meeting. Whilst oral requests are not permissible under the provisions of section 33 (1) of the Localism Act 2011, consideration could be given to adjusting the notice period required in the Code of Conduct for receipt of written requests in exceptional circumstances. The amended Code submitted to the Committee at its last meeting required that notice be given at least five working days before the meeting. It is suggested that this provision should be retained in order to ensure that, in the normal course of events, the Monitoring Officer has sufficient time to consider and review the requests. However, the Code could be amended to provide that, by exception, where circumstances require and at the discretion of the Monitoring Officer, a written request for a dispensation may be submitted no later than 24 hours before a meeting at which the relevant matter is to be discussed. Suggested wording is set out in Appendix 1 and is shown in ***bold/italic/underlined*** text (paragraph 11.2 (a) (ii)).

2. CONCLUSION

- 2.1. A dispensation may only be granted under section 33 (2) of the Localism Act 2011 on a written request to the proper officer.
- 2.2. The Committee is invited to recommend the Council to approve the amendments to the Members' Code of Conduct, as set out in Appendix 1 and to delegate authority to the Monitoring Officer to grant dispensations under that Code.

Source Documents	Location
Localism Act 2011	http://www.legislation.gov.uk/ukpga/2011/20/contents
Members' Code of Conduct	http://www.cambridgeshire.gov.uk/info/20050/council_structure/288/councils_constitution