



## Standards Committee

**Date:** FRIDAY, 6 SEPTEMBER 2019  
**Time:** 11.30 am  
**Venue:** COMMITTEE ROOMS, 2<sup>ND</sup> FLOOR, WEST WING, GUILDHALL

**Members:** Ann Holmes (Chair)  
Caroline Addy (Deputy Chairman)  
Randall Anderson  
Judith Barnes (Co-opted)  
Henry Colthurst  
Nick Cooke (Co-opted)  
Mary Durcan  
Deputy Jamie Ingham Clark  
Alderswoman Susan Langley  
Dan Large (Co-opted)  
Vivienne Littlechild  
Deputy Edward Lord  
Alderman Professor Michael Mainelli  
Barbara Newman  
Jeremy Simons  
Vacancy (Co-opted)

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**Lunch will be served in the Guildhall Club at 1pm**  
**NB: Part of this meeting could be the subject of audio visual recording**

**John Barradell**  
**Town Clerk and Chief Executive**

# **AGENDA**

## **Part 1 - Public Agenda**

1. **APOLOGIES**
2. **MEMBERS' DECLARATIONS UNDER THE CODE OF CONDUCT IN RESPECT OF ITEMS ON THE AGENDA**
3. **CHAIR'S WELCOME AND INTRODUCTION**
4. **POLICY ON DISPENSATIONS TO SPEAK**
5. **POLICY ON DISPENSATIONS TO VOTE**
6. **SECTION 618**
7. **PROCESS**

## **Part 2 - Background Papers**

8. **REVIEW OF THE DISPENSATIONS POLICY - DISCUSSION PAPER**  
Report of the Comptroller and City Solicitor.

**For Discussion**  
(Pages 1 - 34)

9. **NOTES ON PETITION AND FEEDBACK FROM CHAIR**

**For Discussion**  
(Pages 35 - 42)

<b>Committee(s)</b>	<b>Date:</b>
Standards Committee (Informal Meeting)	6 <sup>th</sup> September 2019
<b>Subject:</b> Review of the Dispensations Policy – Discussion Paper	<b>Public</b>
<b>Report of:</b> Michael Cogher, Comptroller & City Solicitor	<b>For Discussion</b>

## 1. Introduction

This discussion paper outlines the operation of the Dispensation's Policy since its commencement on 1<sup>st</sup> March 2019, together with the various issues which have arisen, including a petition and Wardmote resolution, to enable the Committee to carry out an informal discussion pending a formal review of the policy and the implementation of any changes considered necessary by members at the October meeting of the Committee. The Dispensations Policy is attached at **Appendix 1**.

## 2. Petition

A petition relating to the Dispensations Policy was received and considered by the Court at its meeting of 25<sup>th</sup> April 2019 and referred to the Standards Committee for its consideration. A copy of the petition appears at **Appendix 2** and will be formally considered by the Committee at its October meeting. The petition is a relevant consideration in reviewing the operation of the Dispensations Policy. It is not however the only relevant consideration and it must be considered alongside other relevant matters including the Principles of Public life, general public confidence in local government and the Corporation in particular, and non-Localism Act requirements/restrictions in relation to conflicts of interest. The weight to be given to these various considerations is a matter for the Committee, having considered all relevant matters.

## 3. Annual Wardmote Resolution

A Wardmote resolution in similar terms to the petition was passed by the Ward of Aldersgate and considered by the Court of Aldermen on 23<sup>rd</sup> May 2019. This has also been referred to the Committee for its consideration. A copy appears at **Appendix 3**. As with the petition the Wardmote Resolution is a relevant consideration.

## 4. Dispensations

Under the current Policy the Committee's approach is to generally grant dispensations to speak but to only grant dispensations to vote in exceptional circumstances. Dispensations to speak on general housing matters and planning/licensing matters as a member of the public are available through the Town Clerk under delegated authority, as well as dispensations to speak and vote on the setting of Council Tax.

The table in **Appendix 4** summarises the 13 dispensations applications made and the decisions on them since 1 March 2019. Eleven applications were couched in very wide terms. The Sub-committee took the view that these applications were so wide as to prevent the committee from discharging its duty to taken into account all relevant circumstances. More specific dispensations were however granted to those applicants. It should be noted that in one case the committee considered it appropriate to grant a dispensation to vote (for the avoidance of doubt) where it considered that the member did not have an engaged DPI. Three examples of applications for very general dispensations to speak and vote are attached at **Appendix 5a, b and c**.

### **(i) General Dispensations**

The Committee has the power to grant a dispensation for up to 4 years. It follows that “general” dispensations may be granted to remove the necessity for repeat applications. This has been done in the case of “general housing”, “speaking as a member of the public” and Council Tax cases.

However, this discretion does not extend as far as granting dispensations in circumstances where the committee is unable to discharge its duty to have regard to all relevant circumstances or to the granting of dispensations which are so wide as to simply ignore or disapply the statutory scheme and therefore fetters the Committee’s discretion. More lengthy (in terms of time) and general dispensations could be granted were the Committee so minded provided that its duty to properly consider all relevant circumstances is discharged in any given case. Equally, the Committee is entitled to take the approach that case by case consideration remains the preferable approach.

### **(ii) Legal Implications**

#### **a. General Legal Considerations**

In applying the power to grant dispensations under the Localism Act the Corporation must act within its general public law duties. The relevant and well-established requirements are as follows: -

1. The decision maker must understand the relevant law and give effect to it. This means recognising that the starting point, where a DPI is engaged, is that the member cannot speak or vote without a dispensation and that a dispensation can only be granted where the decision making considers it appropriate in all the circumstances on one of the statutory grounds. There is no entitlement to or presumption in favour of a dispensation. It is a matter for the discretion of the decision maker in all the circumstances.
2. The system seeks to strike a balance between public confidence in objective decision making with democratic representation. On occasions democratic representation by a particular member may be restricted but that is considered to promote rather than reduce the interests of democracy. There is no legal requirement that any particular Ward be represented on any given committee (see *R. (Richardson) v N Yorkshire CC* [2004] 1WLR).

3. The decision maker when considering an application for a dispensation, is required by law to take into account all relevant circumstances and ignore any legally irrelevant matters ("Wednesbury reasonableness"; Associated Provincial Picturehouses Ltd. V. Wednesbury Corporation [1948] 1 KB). The decision maker is also under a duty to ask themselves the right question and take reasonable steps to acquaint themselves with the relevant information to enable them to answer it correctly ("the Tameside duty"). Thus, the decision maker may require a reasonable level of information to be provided by the applicant and is under a duty to ensure that they have sufficient information to reach a decision.
4. The decision maker must genuinely exercise discretion and may not fetter it by an overly rigid policy so as to prevent the proper exercise of discretion in any given case. Nor must the decision maker act on the direction of a third party. Thus, it would be unlawful to adopt a policy at the extreme ends of the discretion i.e. to always refuse applications or to always grant them. It is however lawful to say that a particular type of application will only be allowed in exceptional circumstances, provided such a policy is based on relevant considerations. Where a policy has been adopted it may be departed from for good reasons. An arbitrary departure is likely to be unlawful on the grounds of failure to consider a relevant matter/irrationality.

## **b. Other Legal Constraints**

Notwithstanding the granting of a dispensation to speak and vote under the Localism Act, participation may nevertheless still be curtailed in the case of housing management and regulatory/disciplinary (sometimes referred to as "quasi-judicial") matters, particularly planning and licensing.

### **(i) Housing Management – S.618 Housing Act 1985**

The Housing Act 1985 is the principal statute dealing with local housing authorities. S.618 of the Act, which applies uniquely to the Corporation, provides that the Corporation may establish a committee to discharge its functions under the Act which may consist of such persons as it thinks fit. S618(3) provides: -

*A person is not, by reason only of the fact that he occupies a house at a rental from the Common Council, disqualified from being elected or being a member of that Council or any committee of that Council; but no person shall vote as a member of that Council, or any such committee, on a resolution or question which is proposed or arises in pursuance of this Act or the Housing Associations Act 1985 and relates to land in which he is beneficially interested.*

Voting in breach of s.618(3) is a criminal offence. Matters such as repairs, rent, service charges and amenities relating to a member's tenancy or lease would therefore be caught notwithstanding any dispensation under the Localism Act. There is no provision to relax the application of s.618 and it is entirely separate from the Localism Act requirements.

Whether s.618 is engaged in any given case is clearly a question of fact. Clearly, decisions affecting the rent, service charges, maintenance will relate to a member's tenancy/lease as will housing management decisions affecting a member's enjoyment of their property and the common parts of the estate. It should be noted that s.618 applies to all the Corporation's housing functions not just the Barbican Estate. A licence is not a "beneficial interest in land" and therefore not covered by s.618.

It has been suggested in some quarters that the existence of s.618 is an oversight and that it should have been repealed by the Localism Act. This does not necessarily follow. The predecessor provision to s.618 was to be found in the Housing Act 1957. It therefore survived the enactment of the rules on interests under the Local Government Act 1972 in 1972 and 1985 and the replacement of the 1972 Act provisions with the Local Government Act 2000.

Thus the s.618 restriction has applied to the Corporation separately from the statutory rules on members' interests since at least 1972 and has survived at least three obvious opportunities for review and repeal.

Another reason that it has survived may be because it reflects the Corporation's very different position to London Boroughs in relation to housing management, including the fact the Barbican Estate falls outside the Housing Revenue Account and that its income and outgoings are not ringfenced.

In any event for the time being s.618 is on the statute book and binding on the members caught by it. It is also specifically referred to in Standing Orders (S.O. 44).

It would be open to the Corporation to seek the repeal of s.618 through the City Remembrancer. Should the Government accept the Committee on Standards in Public Life's recommendation to replace s.31 of the Localism Act this would be an obvious opportunity to pursue the matter. However, such a decision is not one for the Standards Committee but should be referred to the Policy and Resources, Children and Community Services Committee and the Barbican Residential Committees in the first instance, and then if appropriate to the Court.

## **(ii) The Rule against Bias – Planning, Licensing etc.**

The granting of a dispensation to speak and vote as a member of a committee (as opposed to exercising rights as a member of the public) cannot override the rule against bias where it is engaged.

The rule against bias is one of the rules of procedural fairness (or "Natural Justice") which the Courts will apply to public bodies in certain circumstances. The rule applies to judicial and quasi-judicial decisions and other circumstances where the Court considers it appropriate including planning and licensing. Where the rule is breached the decision may be quashed on an application for judicial review.

Participation in breach of the rule may also be subject to a finding of maladministration by the Ombudsman on a complaint by an affected person. There are two types of bias, actual and apparent.

- **Actual Bias**

At common law an adjudicator is disqualified if they have a direct personal or pecuniary interest in the subject matter of the adjudication – they must not act as a party and judge. The obvious example is a planning or licensing application which materially affects a member's property or their enjoyment of it.

- **Apparent Bias**

A member will also be disqualified where the circumstances of the case would lead a fair-minded and informed observer to conclude that there was a real possibility of bias. This is a question of fact in all the circumstances.

### **Example**

The position and the relationship between the Localism Act provisions and the rule against bias is illustrated by the decision in *R. (Kelton) v. Wiltshire County Council* [2015] EWHC 2853.

In *Kelton* a member of the planning committee was a remunerated director of a housing association which had been in detailed discussions with the applicant developer about the provision of affordable housing on the application site. The member voted in favour of the application. As there was no contract in place between the developer and the housing association Cranston J. held that no actual bias was present and nor did the member have a disclosable pecuniary interest in the matter.

However, given the nature of the discussions between the housing association and the developer put it in a superior position to other potential providers and that the member had a private interest in the housing association as a director apparent bias was present and it was wrong for the member to have participated. Accordingly, the planning decision was quashed.

## **5. Procedure**

### **(i) Use of Forms**

The application form was devised in order to assist members in making their best possible case for the granting of a dispensation and to assist the committee in discharging its duties to make reasonable enquiries ( the “Tameside duty”; *Secretary of State for the Environment and Science v. Tameside MBC* [1977] AC 1014) and under s.33(2) of the Localism Act to have regard to all relevant circumstances. (see legal implications below).

A number of members have expressed dissatisfaction at the length of the form and 4 out of the 13 applications expressly refused to use the form.

In the circumstances the Committee may wish to review the position. A number of options and combination of options could be considered including: -

- (a) Maintaining the status quo.
- (b) Producing a shorter and more simple form.
- (c) Having a shorter form for “general housing” and “speaking as member of the public applications”.
- (d) Making use of a form compulsory.
- (e) Removing the requirement for a form and reverting to guidance.
- (f) Requesting or requiring that members appear before the committee.

## **(ii) Efficient and Effective Management of the Process**

Dealing with an ad-hoc application can pose administrative difficulties, particularly in convening panels at short notice and the ability of members to resubmit applications in substantially the same terms. Moreover, the adoption of a more partnership approach may be beneficial to applicant members and the committee. Matters which could be considered include: -

- (a) Fixed publicised meetings of the Dispensations Sub-committee e.g. once every two months.
- (b) Setting deadlines for applications for dispensations.
- (c) Guidance on what will be considered an urgent application and what will not.
- (d) Recommending or requiring a member to take legal advice from the Monitoring Officer or relevant committee lawyer prior to submitting an application.
- (e) Altering the Assessment Criteria so that complaints in relation to speaking and voting will not be investigated provided that the member has obtained advice in good faith and with full disclosure from the Monitoring Officer or committee lawyer that a DPI is not engaged.
- (f) Removing the requirement that a member may not consider an application for a dispensation for a committee on which they themselves sit or making it a desirable rather than a mandatory matter.
- (g) An express statement that the presence of a co-opted member on the Dispensations Sub-committee is desirable but not mandatory.
- (h) Including parking spaces and private storage spaces under the definition of “general housing matters” for the purposes of the Town Clerk’s delegated authority.
- (i) Extending the Town Clerk’s delegated authority to grant dispensations to speak as a member of the public on planning and licensing matters to the members of those committees.

## **Appendices**

<b>Appendix 1:</b>	Dispensations Policy
<b>Appendix 2:</b>	Petition relating to the Dispensations Policy
<b>Appendix 3:</b>	Wardmote resolution
<b>Appendix 4:</b>	Dispensation Applications since 1 March 2019
<b>Appendix 5a, b and c:</b>	Examples of applications for general dispensations

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## **Standards Committee**

### **Policy and guidance on the granting of dispensations under the Localism Act 2011 and the Members' Code of Conduct**

#### **Introduction**

##### **Purpose of this document**

1. The purpose of this document is to explain:
  - (a) what a dispensation is, and when it might be necessary to apply for one in order to participate in an item of business;
  - (b) the process for applying for a dispensation;
  - (c) the statutory grounds for granting a dispensation;
  - (d) the agreed additional factors that will be taken into account in deciding whether one or more of the statutory grounds have been satisfied; and
  - (e) the general policy position on the granting of dispensations.
2. The aim is to provide as much guidance as possible to Members and Co-opted Members (referred to collectively here as "Members") about when it might be appropriate to apply for a dispensation, the information that should be provided in the application form in every case, and additional information that might usefully be provided in order to support a particular application. This document will also be used by the Standards Committee to ensure consistency in decision making.

##### **Application**

3. The Localism Act 2011 applies to the City Corporation in its capacity as a local authority or police authority. However, the City Corporation has chosen to apply the Members' Code of Conduct, including the rules on disclosable pecuniary interests, to all of its functions – not just its local authority and police authority functions. The Code of Conduct applies to any member of the City Corporation and any external or co-opted member of a committee of the City Corporation (collectively referred to as a "Member" in this document).

##### **Statement of general policy**

4. The default statutory position is that a Member who has a disclosable pecuniary interest in any matter being considered at a meeting cannot speak or vote on that matter. Members may apply for a dispensation from these restrictions on specified statutory grounds and all applications will be decided on their individual merits. The Standards Committee will exercise its discretionary power to grant dispensations subject to its general duty to promote high standards of conduct; in a way that is consistent with the Seven Principles of Public Life and helps to maintain public confidence in the conduct of the City Corporation's business.

In considering whether and how to exercise its discretion the Standards Committee will need to see good reasons why an application should succeed on one or more of the statutory grounds, with particular reference to the additional factors set out in this document. **The onus is on the Member making an application to demonstrate that a dispensation is justified in the circumstances.**

5. The Court of Common Council has requested that the Standards Committee "...adopt a position where Members would generally be granted a dispensation to speak (but not vote) on all matters concerning their Ward where they have an engaged disclosable pecuniary interest other than when that disclosable pecuniary interest would be directly and materially impacted by a matter to be determined at a meeting of the Court or one of its committees or sub-committees, subject of course to the proper exercise of the statutory discretion in each case." This is the guiding principle that underpins this policy.

### **Disclosable pecuniary interests**

6. In order to consider dispensations, it is first necessary to understand the rules around disclosable pecuniary interests – what they are, when they are engaged and their effect on participation. A summary of the position is therefore set out at Appendix 1. Members should also refer to the other guidance available on disclosable pecuniary interests and the Members' Code of Conduct, which can be accessed via the link in Appendix 1.

### **Granting dispensations**

#### **The process**

7. A relevant authority may, on a written request made to the proper officer of the authority by a Member of the authority, grant a dispensation relieving the Member from either or both of the restrictions on speaking or voting in cases described in the dispensation. A dispensation must specify the period for which it has effect, which may not exceed four years. At the City Corporation the granting of such dispensations is a function of the Standards Committee and its Dispensations Sub-Committee (referred to collectively in this document as "the Standards Committee") although individual applications will normally be considered by the Dispensations Sub-Committee. The Standards Committee has decided to delegate authority to determine certain types of straightforward dispensation applications to the Town Clerk.
8. Dispensation applications, whether determined by the Standards Committee, or by the Town Clerk under delegated authority, are subject to the statutory rules on public access to information in the normal way. In most cases the public interest in disclosing this information will outweigh the public interest in maintaining any applicable exemption. This means that the detail of any application will normally be made public, even if it contains special category personal data, including information about a protected characteristic, that is relevant to the application.
9. As previously stated, the onus is on individual Members to decide whether they have a disclosable pecuniary interest in any given matter. Therefore, the Standards Committee will generally assume that any dispensation being sought is required in order to allow the Member concerned to participate in the relevant item of business and will not normally refuse a request simply on the basis that a dispensation is not thought to be necessary.

The only exception to this is where the facts as disclosed in the application form could not possibly engage a disclosable pecuniary interest. **Any dispensation is entirely permissive in nature and does not impose any restrictions on speaking or voting where no such restrictions otherwise exist.**

10. The expectation is that the Town Clerk will read out any applicable dispensations at an appropriate point in the meeting, either under the agenda item on Members' declarations or at the start of the consideration of the item of business in question. However, it is the responsibility of the Member concerned to make sure that the existence and nature of any dispensation being relied upon is made known at a meeting.
11. Any dispensation relates only to the disclosable pecuniary interest(s) cited in the application. If a Member has another engaged disclosable pecuniary interest, that was either omitted from the original application, or arose after the original application was made, then this will not be covered by the terms of the existing dispensation. A Member wishing to speak or vote on a relevant item of business in such circumstances would need to make a fresh application. The Standards Committee also reserves the right to review and revoke or amend any dispensation previously granted in appropriate circumstances.

### **Timeliness of applications**

12. The Standards Committee requests that Members lodge any applications as soon as possible after becoming aware that a dispensation is required in order to participate in a particular item of business. A Member does not have to wait until they know the precise date of the meeting at which a matter will be considered before applying for a dispensation. If applications are submitted at short notice it may not be possible to consider them in time for the meeting in question.

### **The statutory grounds for granting a dispensation**

13. The legislation provides that a relevant authority (which includes the City Corporation) may only grant a dispensation if, after having had regard to all relevant circumstances, the authority:
  - (a) considers that without the dispensation the number of persons prohibited 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;
  - (b) considers that 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) considers that granting the dispensation is in the interests of persons living in the authority's area;

- (d) if it is an authority operating executive arrangements, considers that without the dispensation each Member of the authority's executive would be prohibited from participating in any particular business to be transacted by the authority's executive; \* or
- (e) considers that it is otherwise appropriate to grant a dispensation.

\* Grounds (b) and (d) are not directly applicable to the City Corporation but are included for completeness and context.

### Comments on the statutory grounds

- 14. The default position is that a Member with a disclosable pecuniary interest in any matter may not speak or vote on that matter. **The onus is on the Member making an application to demonstrate that at least one of the statutory grounds for granting a dispensation is satisfied.**
- 15. One obvious example of where it may be appropriate to grant a dispensation under statutory ground (a) is where the decision-making body would otherwise be inquorate.
- 16. In the Standards Committee's view, the reference in statutory ground (c) to "persons living in the authority's area" is a reference to residents. A dispensation may also be granted where it is in the interests of other persons accessing the City, its facilities and services – such as City workers – but this would properly come under statutory ground (e). In both cases, the Standards Committee will consider whether not granting a dispensation would be to the disadvantage of that group. The Standards Committee will also take into account how many persons would be disadvantaged, and to what extent.

### Dispensation decisions that are delegated to the Town Clerk

- 17. The Standards Committee has decided to delegate authority to determine certain types of straightforward dispensation applications to the Town Clerk. Whilst one or more of the statutory grounds for granting a dispensation must still be satisfied in each case, the Standards Committee considers that it will normally be possible to establish this in relation to the three types of application set out below. The Town Clerk may grant such dispensations for a term ending on or before the date of the next ordinary Common Council elections. Any Member who requires a dispensation that goes beyond these delegated arrangements must apply to the Standards Committee in the normal way. The matters delegated to the Town Clerk are as follows:

#### Council tax

- (a) The Department for Communities and Local Government guide for councillors entitled 'Openness and transparency on personal interests' states that, "...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."

Whilst this guidance will no doubt provide comfort to Members, it is not intended to be a definitive statement of the legal position. Although the prosecution of a Member who participated in such circumstances is highly unlikely, this cannot be absolutely guaranteed. Members are therefore entitled to apply for a dispensation to speak and vote on the setting of council tax should they wish to have greater assurance on this point. As the Standards Committee considers the granting of a dispensation in these circumstances to be uncontroversial, authority has been delegated to the Town Clerk to determine applications for dispensations relating to council tax.

#### Speaking on planning and licensing applications

- (b) The Standards Committee is of the view that, subject to certain safeguards, Members should generally be permitted to speak with the same rights as a member of the public on planning and licensing applications. However, where a Member has a relevant disclosable pecuniary interest, the Localism Act 2011 prohibits this unless a dispensation is applied for and granted for the purpose. The Standards Committee considers that granting a dispensation in these circumstances will normally be in the interests of persons living in the City and/or will be otherwise appropriate. Therefore, authority has been delegated to the Town Clerk to grant dispensations in appropriate circumstances, to Members who are not members of the Committee in question, for the purpose of making oral representations, answering questions, or giving evidence, relating to planning and licensing applications where the public are also allowed to attend the meeting for the same purpose. This is dependent on the Member in question having submitted written representations on a particular application, or otherwise having satisfied the criteria to speak as a member of the public in the normal way. Any Member relying on such a dispensation should then be treated as a member of the public when making oral representations on that matter. These dispensations are not available to Members of the Planning Committee or the Licensing Committee in relation to the business of their own Committee, and any dispensation granted under delegated powers for this purpose will lapse if a Member is subsequently appointed to the Committee in question. Members of the Planning Committee and the Licensing Committee may still apply for a dispensation to participate in relation to the business of their own Committee, where they have a relevant disclosable pecuniary interest, but must do so on a case by case basis to the Standards Committee.

#### Speaking on general housing matters

- (c) The Standards Committee is of the view that Members should normally be permitted to speak on general housing matters<sup>1</sup> even where they have one or more of the following types of disclosable pecuniary interest relating to a residential property in the City:
  - (i) A lease or tenancy from the City Corporation.
  - (ii) A licence from the City Corporation to occupy land for a month or longer.
  - (iii) A corporate tenancy from the City Corporation, where the tenant is a company in which the Member has a beneficial interest.

N.B. Under the Localism Act 2011 this includes any disclosable pecuniary interest belonging to a spouse, civil partner, or person with whom the Member is living as husband or wife, or as if they were civil partners.

The Standards Committee considers that granting a dispensation in these circumstances will generally be in the interests of persons living in the City. Therefore, authority has been delegated to the Town Clerk to grant such dispensations, so long as the item of business does not relate particularly to the Member's own disclosable pecuniary interest. What this means in practice is that a Member with such a dispensation will be able to speak on housing matters that affect all of the City Corporation's tenants or leaseholders on a particular estate equally. This would include, for example, speaking on the appropriate level of service charge. However, such a dispensation will not permit a Member to speak on an item of business that relates solely or particularly to their own lease or tenancy. This would include, for example, rent arrears or repairs relating to the Member's own property. If a Member is unsure whether an item of business relates particularly to their own disclosable pecuniary interest, they are encouraged to seek advice from the Monitoring Officer or the Town Clerk or apply for a specific dispensation from the Standards Committee.

<sup>1</sup> For these purposes "general housing matters" means the exercise of the City Corporation's functions as a housing authority in relation to: -

- Housing governance i.e. decision making, scrutiny and consultation arrangements together with any proposals for stock transfer.
- General housing management i.e. arrangements for the proper management of the City Corporation's housing stock and housing estates including management of common parts, estate amenities and community facilities, and commercial properties which are an integral part of housing estates, together with the procurement of services to carry out such activities.
- General repairs and maintenance including arrangements for procuring repairs and maintenance.
- General rent and service charge setting.
- Strategic housing policy including allocations, homelessness and the provision of new homes.

For these purposes "general housing matters" does not include:

- The provision of parking spaces, and private storage spaces separate from a dwelling.

### **Factors to be taken into consideration by the Standards Committee**

18. In deciding whether to grant a dispensation under one or more of the specific statutory grounds, the Standards Committee will take into account the (non-exhaustive) list of factors set out in Appendix 3, as well as any other relevant circumstances, as appropriate.

However, the Standards Committee will look at the merits of each application in the round, and simply addressing one or more of the factors in Appendix 3 does **not** mean that a dispensation will be granted.

### **Other related matters**

#### **Multiple applications from a particular ward**

19. Applications to participate in a particular item of business may be received from more than one Member of the same ward. The Standards Committee would prefer to consider the respective merits of all applications from a single ward on a particular item of business at the same time, rather than on a 'first come, first served' basis. To assist with this process, Members are reminded of the request to lodge any applications as soon as possible after becoming aware that a dispensation is required. The Members of each ward are encouraged to work together in deciding whether an application for a dispensation should be made and, if so, in considering which Member or Members would be in the strongest position to apply. This could potentially be organised through the ward deputy.

#### **Section 618 of the Housing Act 1985**

20. Under section 618 of the Housing Act 1985, a Member of the City Corporation may not vote on a resolution or question which is proposed or arises in pursuance of the Housing Act 1985 or the Housing Associations Act 1985 (concerning various housing management issues) and relates to land in which they are beneficially interested. This restriction is separate from, and runs parallel to, the relevant provisions of the Localism Act 2011. **It is not possible to grant a dispensation from the restriction on voting contained in this section.**
21. What this means in practice is that if a housing matter is being considered at a meeting that relates to land in which a Member has a beneficial interest, that Member may not vote, by virtue of section 618 of the Housing Act 1985. Even were the Standards Committee to grant a dispensation to vote under the provisions of the Localism Act 2011, that Member would still be prohibited from voting under section 618 of the Housing Act 1985. In addition, they may only speak on the matter if they have obtained a dispensation to do so under the Localism Act 2011.

### **Conclusion**

22. Requests for dispensations will be determined on their own merits and any dispensation granted must be justified on one or more of the statutory grounds. Dispensations to speak and vote on council tax, to speak on general housing matters, and to speak on planning and licensing applications as a member of the public, may be granted by the Town Clerk under delegated authority. All other applications will be considered by the Standards Committee, which will need to be presented with a clear case and will be guided by the principles set out in this document in making its decision. Any Member applying for a dispensation to the Standards Committee should thoroughly address the factors set out at Appendix 3. Applications should be submitted in good time where possible and Members are requested to liaise with the other Members of their ward where appropriate.

Approved by the Standards Committee and in force from 1 March 2019.

## **Appendix 1 – Disclosable pecuniary interests**

### **What is a disclosable pecuniary interest?**

1. Under the Localism Act 2011 and The Relevant Local Authorities (Disclosable Pecuniary Interests) Regulations 2012 there are a number of disclosable pecuniary interests that prevent a Member from participating in any discussion or vote on a connected item of business under the following headings:

- (a) Employment;

Any employment, office, trade, profession or vocation carried on for profit or gain.

- (b) Sponsorship;

Any payment, etc. towards the election expenses of a Member, or the expenses incurred in carrying out their official duties (other than from the City Corporation). This would include any payment from a trade union.

- (c) Contracts;

Any contract with the City Corporation for goods, services or works. This will include any Member with one or more children at any of the City Corporation's independent schools.

- (d) Land;

Any beneficial interest in land which is within the City. This includes any freehold or leasehold interest in land, as well as any tenancy.

- (e) Licences;

Any licence to occupy land in the City for a month or longer.

- (f) Corporate tenancies;

Any tenancy where the City Corporation is the landlord and the tenant is a company or other body in which the Member or another relevant person has a beneficial interest.

- (g) Securities.

Any shares, debentures, debenture stock, loan stock, bonds, unit trusts and similar investments in a body that has a place of business or land in the City and the total nominal value exceeds £25,000 or 1/100<sup>th</sup> of the total issued share capital.

2. The disclosable pecuniary interest that is most commonly engaged in relation to planning, licensing and housing matters is (d) Land.



### **When is a disclosable pecuniary interest engaged?**

3. The Localism Act 2011 does not provide any additional guidance on judging whether a disclosable pecuniary interest should impact on a Member's participation in a particular item of business or not. It simply states that the prohibition on speaking or voting on a matter applies where a Member:

- (a) is present at a meeting;
- (b) has a disclosable pecuniary interest in any matter to be considered, or being considered, at the meeting; and
- (c) is aware that the condition in paragraph (b) is met.

It is not possible to simply substitute the different descriptions of a disclosable pecuniary interest, such as 'land' or 'employment', into (b) above. Therefore some additional form of wording has to be read into this provision, whether that refers to a disclosable pecuniary interest being 'engaged' in any matter, or 'relating to' any matter, or being 'affected by' any matter. There isn't a definitive test – whether a Member has a disclosable pecuniary interest in a particular item of business is a matter of fact and degree to be determined in each individual case.

4. It is therefore up to individual Members to make a judgement as to whether any disclosable pecuniary interest that they possess relates to a particular item of business, drawing on their experience and taking any advice as appropriate. As a starting point, a Member should consider:

- (a) whether the matter before the meeting could reasonably be said to appear to be likely to affect their disclosable pecuniary interest; or
- (b) whether a member of the public would consider that the Member might be influenced by their disclosable pecuniary interest.

If the answer to either of these questions is in the affirmative, then the Member is likely to have a disclosable pecuniary interest in the matter being considered. This will be the case, for example, where a decision would materially affect a Member's interest in land, either by affecting the value of that land, the prospects of selling that land, or the use and enjoyment of that land. It should be apparent from the above examples that there does not have to be a financial impact on a Member in order for that Member to be prohibited from participating in a particular item of business.

5. Speaking in general terms, a Member is highly likely to have an engaged disclosable pecuniary interest in a planning or licensing application for a property adjacent to their home. A Member is less likely to have a disclosable pecuniary interest in a planning or licensing application for a property several streets away from their home. However, any decision on whether a Member does have a disclosable pecuniary interest in a particular matter will always depend on the particular circumstances.
6. It may be helpful to give some specific examples of scenarios where a disclosable pecuniary interest will not normally be engaged.

In the Standards Committee's view, no Member will have a disclosable pecuniary interest in general matters such as City- wide refuse collection, street cleaning or air quality, even if they do live and/or work in the City (unless, for example, they are contractually involved in the delivery of the service).

## **Relationship between the Localism Act 2011 and the Members' Code of Conduct**

7. The provisions of the Localism Act 2011 in relation to disclosable pecuniary interests are reflected in the Members' Code of Conduct. Paragraph 13 provides that, "Unless dispensation has been granted, you may not participate in any discussion of, vote on, or discharge any function related to any matter in which you have a pecuniary interest as defined by regulations made by the Secretary of State". **The Members' Code of Conduct applies to all of the City Corporation's functions, not just local authority and police authority functions.**

## **Effect on participation and possible sanctions**

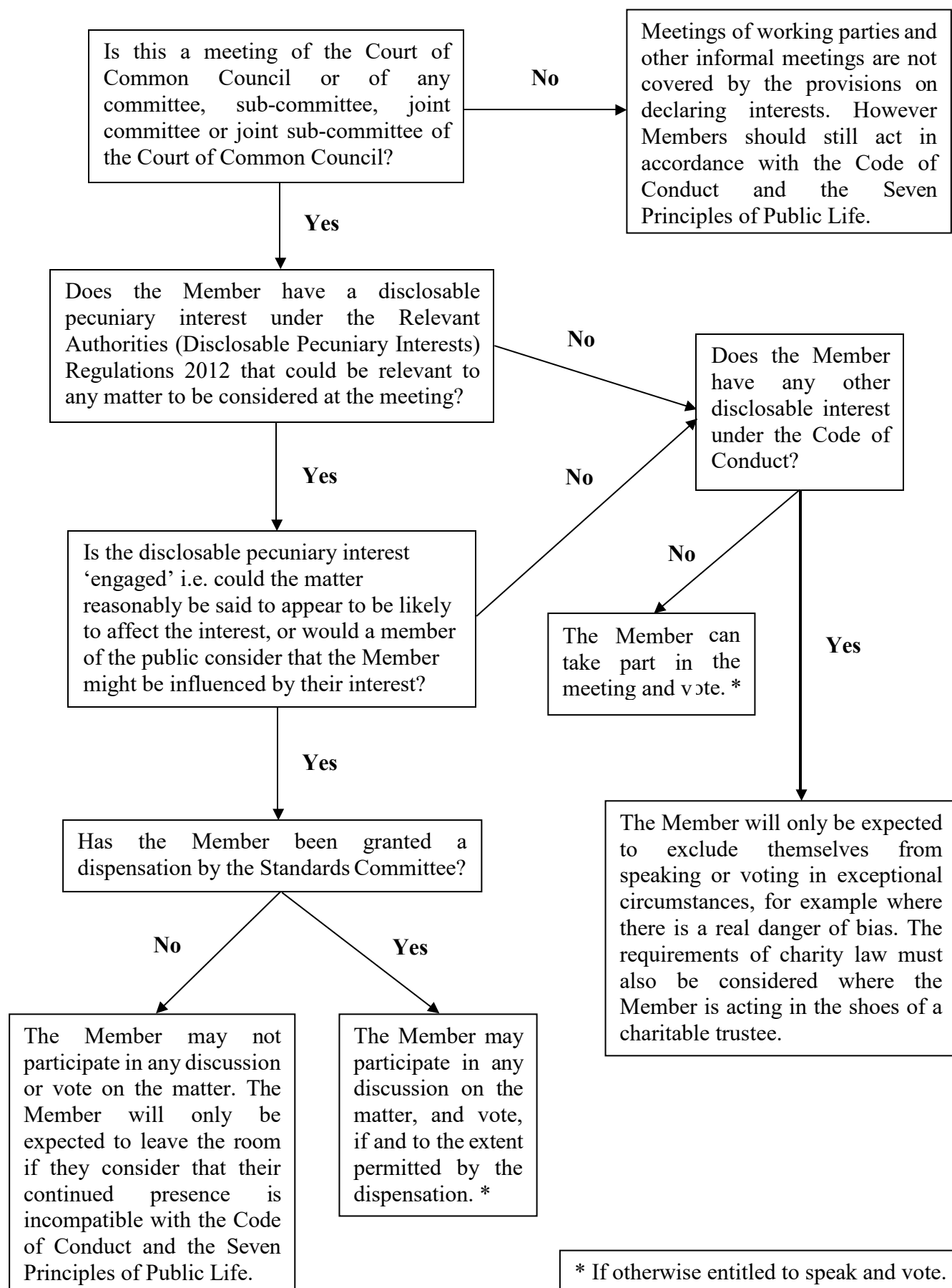
8. A Member who is present at a meeting of the City Corporation, and who has a disclosable pecuniary interest relating to any business being considered, must not participate in any discussion of the business at the meeting, or participate in any vote taken on the matter at the meeting. If a Member becomes aware of their disclosable pecuniary interest during the meeting, they should not participate further from that point. **The prohibition on speaking includes speaking as a member of the public.** In certain circumstances, Members can request a dispensation from these prohibitions. The City Corporation's standing orders do not require a Member with a disclosable pecuniary interest in an item of business to automatically leave the room. The Member should however leave the room if they consider that their continued presence is incompatible with the Members' Code of Conduct or the Seven Principles of Public Life. A flowchart illustrating these principles is attached at Appendix 2.
9. A Member commits a criminal offence if, without reasonable excuse, they participate in any discussion or vote on any City Fund matter (e.g. a local authority or police authority matter) in which they have a disclosable pecuniary interest. For this reason Members are advised to err on the side of caution. A Member who is found guilty of such an offence can be fined up to £5,000 and disqualified from holding office for up to five years. A prosecution may only be instigated by or on behalf of the Director of Public Prosecutions (DPP). In all cases, whether an item of business falls under the City Fund or not, a Member who participates in any discussion or vote despite having a disclosable pecuniary interest will be committing a breach of the Members' Code of Conduct. A breach of the Code of Conduct may also occur whether a Member is aware that they have a disclosable pecuniary interest or not.
10. Where a Member has an engaged disclosable pecuniary interest, there are other mechanisms through which the views of their constituents can be communicated, without the need for a dispensation. The Member could for example submit written representations, or brief another Member to speak on their behalf.

## **Further information**

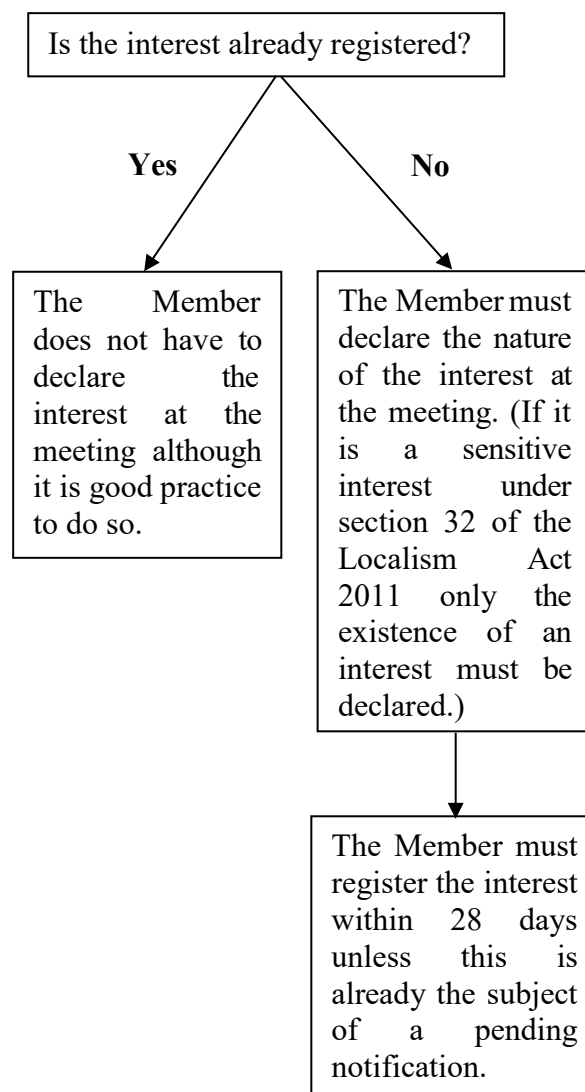
11. The full text of the Members' Code of Conduct and additional guidance can be found at the following link: <https://www.cityoflondon.gov.uk/about-the-city/how-we-make-decisions/Pages/corporate-governance.aspx>. Members are advised to seek advice from the Monitoring Officer or the Town Clerk if they are unsure about whether they have a disclosable pecuniary interest in a particular matter.

## **Appendix 2 – Interests at meetings**

### **Part I: Participation at meetings where an interest may be engaged**



## Part II: Declaring interests at meetings and subsequent registration



### **Appendix 3 – Factors to be taken into consideration by the Standards Committee**

#### Maintaining public confidence

- (a) Is the nature of the Member's interest such that allowing them to participate would risk damage to public confidence in the conduct of the City Corporation's business?

#### Applications to vote

- (b) Granting a dispensation to vote has a more direct influence over the decision-making process than a dispensation to speak, goes beyond simply representing the views of constituents and carries more risk of damaging public confidence. **Therefore, a dispensation to vote will only be granted in exceptional circumstances.**

#### Equivalent public rights

- (c) The default position under the Localism Act 2011 is that a Member with a disclosable pecuniary interest in a matter being considered at a meeting loses any right to speak that they would otherwise have had – **even as a member of the public**. However, in the Standards Committee's view the existence of such public speaking rights are a relevant consideration. Therefore, a dispensation to speak is more likely to be granted for the purpose of making representations, answering questions or giving evidence relating to the business where the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or some other reasonable expectation. This is most likely to arise in relation to planning and licensing matters (see paragraph 17(b) of the main document) but may arise in other areas. Any Member granted a dispensation to speak in such circumstances should then be treated as a member of the public when making oral representations on that matter. The onus though is still on the Member concerned to demonstrate that it is appropriate to grant a dispensation.

#### Expectation of ward representation

- (d) Is there a reasonable expectation that the Member's ward will be directly represented? For example, is the item of business to be considered at a ward committee? Does the item of business directly affect the Member's ward?

#### Widely held interests

- (e) Is the interest common to the Member and a significant proportion of the general public? If so, a Member may be less likely to be influenced by that interest and granting a dispensation may carry less risk of damaging public confidence. An obvious example would be the setting of council tax.

#### Directly impacted interests

- (f) How directly or materially impacted is the disclosable pecuniary interest? For example, whilst arrangements have been put in place for allowing a Member with a lease or tenancy from the City Corporation to participate in general housing discussions, the Standards Committee will only grant a dispensation to a Member to participate in business relating to their particular lease or tenancy in very exceptional circumstances.

### Personal knowledge, etc.

- (g) Is the participation of the Member in the business that the interest relates to justified by their particular knowledge, role or expertise? Would the potential contribution be of especial value to the decision-making process and provide a perspective that would not otherwise be available? Should the knowledge or expertise in question be provided by a Member or by a disinterested official adviser? Would the Member's participation assist or potentially distort the debate?

### Diversity and inclusion

- (h) Does the Member have a particular viewpoint that might not otherwise be represented and might assist the debate in relation to that particular matter – whether this relates to age, race, disability, gender, sexual orientation, religion or belief, or any other protected characteristic?

### Manifesto promises

- (i) Was the Member elected on a public platform that they would specifically address the item or items of business for which the dispensation is sought? Did this appear as a commitment in their election material?

### Scope and duration

- (j) Some requests for dispensations that are received are general in nature and for a lengthy time period. Others are much more specific in relation to a particular matter at a particular meeting. **A focussed application is more likely to be successful** as this enables the Standards Committee to consider a specific set of circumstances. However, to avoid unnecessary bureaucracy arising from delays and adjournments, it is generally acceptable to apply for a dispensation in relation to a specific matter at a specific meeting, and/or such later meetings of that committee during the municipal year at which the matter may be considered.

### Previous dispensation decisions

- (k) The Standards Committee cannot fetter its own discretion and must consider each application on its own merits. However, it is beneficial for all concerned for there to be a consistent approach to applications made in similar circumstances, and the Standards Committee will therefore have due regard to its own previous decisions, always acknowledging that the consensus can change over time.

# **Petition to the Court of Common Council City of London**

## **Disenfranchisement of resident electors**

We, the undersigned residents of the City of London, declare that we have no confidence in the City Corporation's current "standards" policy and practice.

We petition the Court of Common Council to make immediate and fundamental reforms so that:

- our elected representatives are free to speak and vote on our behalf, including on matters in which they have a declared interest (unless the matter uniquely or especially affects them), so that we have the same level of representation as residents of other local authorities; and
- our elected representatives do not feel intimidated into not speaking or voting on matters that affect us because they fear referral by the Corporation to a complaints process that has proved to be not fit for purpose – or worse, referral to the police – simply because they have a declared interest in a matter, even though they can derive no financial benefit from it.

## **WARD OF CRIPPLEGATE, WITHIN & WITHOUT**

**SANDRA WATSON**

**Hon. Ward Clerk**

**Telephone**

**(H)**

**(M)**

**Mr Alex Berry,  
Electoral Services Manager,  
Town Clerk's Office  
Corporation of London,  
PO Box 270  
Guildhall  
London EC2P 2EJ**

**21<sup>st</sup> March, 2019**

**Dear Alex,**

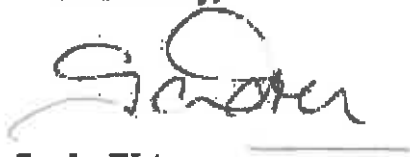
**Wardmote – 2019**

**The following resolutions were passed at our Wardmote last night:-**

- 1. That the City of London Corporation commission a study reporting in no more than one year regarding pedestrian flows through the Golden Lane Estate ("GLE") resulting from current and anticipated property developments in the vicinity of the GLE and consult with GLE residents regarding the current "private" status of the GLE as a result of which residents pay for the maintenance of areas of the GLE that are in practice open to the public."**
- 2. That this Wardmote declares that it has no confidence in the City Corporation's current "standards" policy and practice and calls upon the Court of Common Council to make immediate and fundamental reforms so that our elected representatives are free to speak and vote on our behalf including on matters in which they have a declared interest (unless the matter uniquely or especially affects them) so that we have the same level of representation as residents of other local authorities.**

**Will you please arrange for the necessary submission to the Grand Court of Wardmote.**

**Yours sincerely,**



**Sandra Watson**



**Appendix 4**
**Dispensation decisions since 1 March 2019**

<b>Name</b>	<b>Dispensation Sought</b>	<b>Outcome/Authority</b>	<b>Decision Date</b>	<b>Decision</b>
Randall Anderson	To speak on all matters relating to the Barbican residential estate except any matter relating exclusively to Breton House (and not generally to the whole estate) until April 2020.	Partially granted - Dispensations Sub (Standards) Committee	01/04/19*	Dispensation to speak on general housing matters, as defined in the dispensations policy, and also car parking spaces and private storage spaces, until April 2020 insofar as those issues affect residents of the Barbican residential estate equally.
Adrian Bastow	To speak on all matters relating to the Barbican residential estate except any matter relating exclusively to Flats 1 to 58 (inclusive) Defoe House (and not generally to the whole estate) until April 2020.	Partially granted - Dispensations Sub (Standards) Committee	01/04/19*	Dispensation to speak on general housing matters, as defined in the dispensations policy, and also car parking spaces and private storage spaces, until April 2020 insofar as those issues affect residents of the Barbican residential estate equally.
Mark Bostock	To speak and vote on all matters relating to the Barbican residential estate except any matter relating exclusively to Frobisher Crescent (and not generally to the whole estate) until April 2020.	Partially granted - Dispensations Sub (Standards) Committee	01/04/19*	Dispensation to speak on general housing matters, as defined in the dispensations policy, and also car parking spaces and private storage spaces, until April 2020 insofar as those issues affect residents of the Barbican residential estate equally.
David Bradshaw	To speak on all matters relating to the Barbican residential estate except any matter relating exclusively to Cromwell Tower (and not generally to the whole estate) until April 2020.	Partially granted - Dispensations Sub (Standards) Committee	01/04/19*	Dispensation to speak on general housing matters, as defined in the dispensations policy, and also car parking spaces and private storage spaces, until April 2020 insofar as those issues affect residents of the Barbican residential estate equally.
Mary Durcan	To speak on all matters relating to the Barbican residential estate except any matter relating exclusively to Flats 8 to 95 (inclusive) Andrewes House (and not generally to the whole estate) until April 2020.	Partially granted - Dispensations Sub (Standards) Committee	01/04/19*	Dispensation to speak on general housing matters, as defined in the dispensations policy, and also car parking spaces and private storage spaces, until April 2020 insofar as those issues affect residents of the Barbican residential estate equally.

Name	Dispensation Sought	Outcome/Authority	Decision Date	Decision
Barbara Newman	To speak on all matters relating to the Barbican residential estate except any matter relating exclusively to Mountjoy House (and not generally to the whole estate) until April 2020.	Partially granted - Dispensations Sub (Standards) Committee	01/04/19*	Dispensation to speak on general housing matters, as defined in the dispensations policy, and also car parking spaces and private storage spaces, until April 2020 insofar as those issues affect residents of the Barbican residential estate equally.
John Tomlinson	To speak on all matters relating to the Barbican residential estate except any matter relating exclusively to Cromwell Tower (and not generally to the whole estate) until April 2020.	Partially granted - Dispensations Sub (Standards) Committee	01/04/19*	Dispensation to speak on general housing matters, as defined in the dispensations policy, and also car parking spaces and private storage spaces, until April 2020 insofar as those issues affect residents of the Barbican residential estate equally.
* These applications were received shortly before a meeting of the Barbican Residential Committee on 18/03/19. As an interim measure, the Town Clerk approved a dispensation under urgency for each of these Members to speak at that meeting only on general housing matters, and also car parking spaces and private storage spaces, pending consideration by the Dispensations Sub.				
Ann Holmes	Until the ward elections in March 2021 to:  (a) speak and vote on the setting of council tax;  (b) speak as a member of the public on planning applications; and  (c) speak as a member of the public on licensing applications.	Granted - Town Clerk under delegated authority (para 17 of Dispensations Policy)	04/06/19	Dispensation until the ward elections in March 2021 to:  (1) speak and vote on the setting of council tax;  (2) speak as a member of the public on planning applications; and  (3) speak as a member of the public on licensing applications.
Mark Bostock	Reconfirmation of dispensation granted on 01/04/19, following acquisition of the lease of a store in the Barbican Estate, and pending consideration of a new application by Dispensations Sub.	Granted - Town Clerk under urgency (Standing Order 41(a))	14/06/19	Reconfirmation of dispensation granted on 01/04/19.

Name	Dispensation Sought	Outcome/Authority	Decision Date	Decision
Mark Bostock	<p>To speak and vote on any matter which affects my constituents and in which I may have a “pecuniary interest”, except for a matter which:</p> <p>(a) affects me uniquely or more than any of my constituents; and</p> <p>(b) insofar as regards a dispensation to vote only, falls within the restriction imposed by section 618 of the Housing Act 1985 for as long as that provision remains on the statute book;</p> <p>until the ward elections in March 2021.</p>	Partially granted - Dispensations Sub (Standards) Committee	03/07/19	<p>Dispensation until the ward elections in March 2021:</p> <p>(1) To speak on general housing matters, as identified in the dispensations policy, and also car parking spaces and private storage spaces, insofar as those issues affect residents of the Barbican residential estate equally; and</p> <p>(2) To speak and vote on planning application (18/00335/LBC) at the Planning and Transportation Committee on 30 July 2019 and any subsequent meeting at which that application is considered; and</p> <p>(3) To speak and vote on the setting of council tax; and</p> <p>(4) To speak on licensing applications with the same rights as a member of the public, in accordance with the dispensations policy.</p>
Brian Mooney	<p>To speak and vote on any matter which affects my constituents and in which I may have a “pecuniary interest”, except for a matter which:</p> <p>(a) affects me uniquely or more than any of my constituents; and</p> <p>(b) insofar as regards a dispensation to vote only, falls within the restriction imposed by section 618 of the Housing Act 1985 for as long as that provision remains on the statute book;</p> <p>until the ward elections in March 2021.</p>	Partially granted - Dispensations Sub (Standards) Committee	03/07/19	<p>Dispensation until the ward elections in March 2021:</p> <p>(1) To speak and vote on the setting of council tax; and</p> <p>(2) To speak on licensing applications with the same rights as a member of the public, in accordance with the dispensations policy.</p>

Name	Dispensation Sought	Outcome/Authority	Decision Date	Decision
Susan Pearson	<p>To speak and vote on any matter which affects my constituents and in which I may have a “pecuniary interest”, except for a matter which:</p> <p>(a) affects me uniquely or more than any of my constituents; and</p> <p>(b) insofar as regards a dispensation to vote only, falls within the restriction imposed by section 618 of the Housing Act 1985 for as long as that provision remains on the statute book;</p> <p>until the ward elections in March 2021.</p>	Partially granted - Dispensations Sub (Standards) Committee	03/07/19	<p>Dispensation until the ward elections in March 2021:</p> <p>(1) To speak and vote on the setting of council tax; and</p> <p>(2) To speak on licensing applications with the same rights as a member of the public, in accordance with the dispensations policy; and</p> <p>(3) To speak on general housing matters, as identified in the dispensations policy, insofar as those issues affect residents of the Golden Lane estate equally.</p>
Jason Pritchard	<p>To speak and vote on any matter which affects my constituents and in which I may have a “pecuniary interest”, except for a matter which:</p> <p>(a) affects me uniquely or more than any of my constituents; and</p> <p>(b) insofar as regards a dispensation to vote only, falls within the restriction imposed by section 618 of the Housing Act 1985 for as long as that provision remains on the statute book;</p> <p>until the ward elections in March 2021.</p>	Partially granted - Dispensations Sub (Standards) Committee	03/07/19	<p>Dispensation until the ward elections in March 2021:</p> <p>(1) To speak and vote on the setting of council tax; and</p> <p>(2) To speak on planning and licensing applications with the same rights as a member of the public, in accordance with the dispensations policy; and</p> <p>(3) To speak on general housing matters, as identified in the dispensations policy, insofar as those issues affect all of the City Corporation’s tenants or leaseholders on your estate equally.</p>

**From:** [Bostock, Mark](#)  
**To:** [Declarations Of Interest and Gifts](#)  
**Cc:**  
 DISPENSATION REQUEST  
 07 June 2019 16:39:42

**Subject:**  
**Date:**

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## Introduction

I am writing to request a dispensation, under section 33 of the Localism Act 2011 (the "Act"), to speak and vote on the matters in which I may have a "pecuniary interest" as described below.

I have chosen not to use the 10-page form produced by the Standards Committee for this purpose as the Act refers only to a "written request" being made, and does not require it to be in any prescribed form. The form produced by the Standards Committee, in my view, contains a fair amount of material that is not properly relevant to the consideration of my request.

For example, section A of the form asks for an explanation as to how granting a dispensation "would not risk damaging public confidence in the conduct of the City Corporation's business." Since the form was produced, it has been demonstrated, through a well supported residents' petition and representations made by the City's two largest residential associations that:

- (a) the policy of the Standards Committee which is reflected in the form has actually damaged public confidence; and
- (b) the public expects their elected representatives to be free to speak and vote on their behalf, within the framework of the law.

I am advised that the law provides for a dispensation to be granted to speak and vote equally. It does not provide for a dispensation to vote to be granted "only in exceptional circumstances", as the Standards Committee's policy specifies in section B of their form. The law provides very broad grounds for a dispensation to be granted, including "the interest of persons living in the authority's area" (section 33(2)(c)). A dispensation need only be granted to speak and vote on a matter in which a member has a "pecuniary interest". The law, it seems, thus gives primacy to democratic representation over a member's "pecuniary interest". It is only when a member is not representing others, but is acting solely in his or her own interests, that the ground mentioned above for granting a dispensation would not apply, and a dispensation, therefore, should not be granted.

## Disclosable Pecuniary interest

I have the following "disclosable pecuniary interests" for the purpose of the Act:

- (a) a long lease that my wife and I hold in a flat at 815 Frobisher Crescent in the Barbican Estate; and
- (b) a lease of a store in the Barbican Estate.

These interests have been published in my register of interests.

## Request for a dispensation

I hereby request a dispensation for the remainder of my term of office (which ends in March 2021) to speak and vote on any matter which affects my constituents and in which I may have a "pecuniary interest", except for a matter which:

- (a) affects me uniquely or more than any of my constituents; and
- (b) insofar as regards a dispensation to vote only, falls within the restriction imposed by section 618 of the Housing Act 1985 for as long as that provision remains on the statute book;

on the grounds that the grant of this dispensation is in "the interest of persons living in the authority's area".

## Urgency

There is some urgency about this request, as I shall be attending meetings of the following committees at which matters will be decided in which, it may be argued, I have a "pecuniary interest":

- (a) the Barbican Residential Committee on Monday 17 June, at which a "charging policy for car parking and stores" will be decided (as noted above, I have a lease of a store in the Barbican Estate); and

(b) the Planning and Transportation Committee on Tuesday 18 June, at which a planning application (18/00335/LBC) will be considered for the installation of replacement illuminated signs in the upper level walkway at Defoe Place (close to the residential flats at the western end of Frobisher Crescent; my flat is in the middle of the Crescent).

Each of these matters falls squarely within the dispensation requested, as it affects a number of my constituents no less than myself. In the case of (a) above, I may speak but not vote, because of the restriction on voting in section 618 of the Housing Act 1985.

### **Comments**

In addition to the general comments made in the “Introduction” above, I wish to add the following:-

I am advised that the law provides that a dispensation may be granted for up to 4 years (the length of a councillor’s term of office). I am therefore requesting a dispensation for the remainder of my current term (21 months). This will achieve parity with many other local authorities.

If a matter arises in which I have a “pecuniary interest” and which is covered by any dispensation granted, it does not necessarily follow that I will actually speak or vote on it. In any particular case, I would use my judgment as a member as to what would be appropriate. Neither I, nor any other member, need to be directed by a small number of fellow members on the Standards Committee as to how to act as a Councillor. A majority of our members are elected in predominantly business wards. This may have caused the previous Standards Committee to have so misjudged “public perception” on which it claimed to have based most of the current policy. That committee seemed to think that the public would favour a heavily restrictive approach, whereas the opposite has now been proved to be true.

With regards,

Mark Bostock

**From:** [Pearson, Susan](#)  
**To:** [Declarations Of Interest and Gifts](#)  
**Cc:** \_\_\_\_\_  
**Subject:** Dispensation request  
**Date:** 24 June 2019 10:01:12

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## DISPENSATION REQUEST

### Introduction

I am writing to request a dispensation, under section 33 of the Localism Act 2011 (the "Act"), to speak and vote on the matters in which I may have a "pecuniary interest" as described below.

I have chosen not to use the 10 page form produced by the Standards Committee for this purpose, as the Act refers only to a "written request" being made and does not require it to be in any prescribed form. The form produced by the Standards Committee, in my view, contains a fair amount of material that is not properly relevant to the consideration of this request.

For example, section A of the form asks for an explanation as to how granting a dispensation "would not risk damaging public confidence in the conduct of the City Corporation's business." Since the form was produced, it has been demonstrated through a well supported residents' petition and representations made by the City's two largest residential associations that:

- the policy of the Standards Committee which is reflected in the form has actually damaged public confidence; and
- the public expects their elected representatives to be free to speak and vote on their behalf, within the framework of the law.

I am advised that the law provides for a dispensation to be granted to speak and vote equally. It does not provide for a dispensation to vote to be granted "only in exceptional circumstances", as the Standards Committee's policy specifies in section B of its form. The law provides very broad grounds for a dispensation to be granted, including "the interest of persons living in the authority's area" (section 33(2)(c)). A dispensation need only be granted to speak and vote on a matter in which a member has a "pecuniary interest". The law, it seems, thus give primacy to democratic representation over a member's "pecuniary interest". It is only when a member is not representing others, but is acting solely in his or her own interests, that the ground mentioned above for granting a dispensation would not apply, and a

dispensation, therefore, should not be granted.

#### Disclosable pecuniary interest

I have a "disclosable pecuniary interest" for the purpose of the Act consisting of a long lease that I hold in a flat at 21 Hatfield House, Golden Lane Estate, London EC1Y 0ST.

This interest has been published in my register of interests.

#### Request for a dispensation

I hereby request a dispensation for the remainder of my term of office (which ends in March 2021) to speak and vote on any matter which affects my constituents and in which I may have a "pecuniary interest", except for a matter which:

(a) affects me uniquely or more than any of my constituents; and

(b) insofar as regards a dispensation to vote only, falls with the restriction imposed by section 618 of the Housing Act 1985 for as long as that provision remains on the statute book;

on the ground that the grant of this dispensation is in "the interest of persons living in the authority's area".

#### Timeliness

I shall be attending a meeting of the Community and Children's Services Committee on 12 July 2019. The agenda for that meeting is not yet known, but matters are frequently considered by this committee which affect my constituents and in which I may occasionally have a "pecuniary interest". The grant of a dispensation of the kind just requested would cover any such matters that may arise at that and future meetings, to the extent that they fall within the terms of the request. I therefore ask that this request be considered before the date of that meeting.

#### Comments

In addition to the general comments made in the "Introduction" above, I wish to add the following:-

I am advised that the law provides that a dispensation may be granted for up to 4 years (the length of a councillor's term of office). I am therefore requesting a dispensation for the remainder of my current term (21 months). This will achieve parity with many other local



authorities.

If a matter arises in which I have a “pecuniary interest” and which is covered by a dispensation granted in response to this request, it does not necessarily follow that I will actually speak or vote on it. In any particular case, I would use my judgment as a member as to what would be appropriate. Neither I, nor any other member, need to be directed by a small number of fellow members on the Standards Committee as to how to act as a councillor. A majority of our members are elected in predominantly business wards. This may have caused the previous Standards Committee to have so misjudged “public perception” on which it claimed to have based most of the current policy. That committee seemed to think that the public would favour a heavily restrictive approach, whereas the opposite has now been proved to be true.

Regards,

Sue

Susan Pearson

Common Councilman  
Cripplegate Ward

**From:** [Mooney CC, Brian](#)  
**To:** [Declarations Of Interest and Gifts](#)  
**Cc:** Fwd:  
**Subject:** 27 June 2019 12:42:01  
**Date:**

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I am writing to request a dispensation, under section 33 of the Localism Act 2011 (the "Act"), to speak and vote on the matters in which I may have a "pecuniary interest" as described below.

I have chosen not to use the 10 page form produced by the Standards Committee for this purpose, as the Act refers only to a "written request" being made and does not require it to be in any prescribed form. The form produced by the Standards Committee, in my view, contains a fair amount of material that is not properly relevant to the consideration of this request.

For example, section A of the form asks for an explanation as to how granting a dispensation "would not risk damaging public confidence in the conduct of the City Corporation's business." Since the form was produced, it has been demonstrated through a well supported residents' petition and representations made by the City's two largest residential associations that:

- the policy of the Standards Committee which is reflected in the form has actually damaged public confidence; and
- the public expects their elected representatives to be free to speak and vote on their behalf, within the framework of the law.

I am advised that the law provides for a dispensation to be granted to speak and vote equally. It does not provide for a dispensation to vote to be granted "only in exceptional circumstances", as the Standards Committee's policy specifies in section B of its form. The law provides very broad grounds for a dispensation to be granted, including "the interest of persons living in the authority's area" (section 33(2)(c)). A dispensation need only be granted to speak and vote on a matter in which a member has a "pecuniary interest". The law, it seems, thus give primacy to democratic representation over a member's "pecuniary interest". It is only when a member is not representing others, but is acting solely in his or her own interests, that the ground mentioned above for granting a dispensation would not apply, and a dispensation, therefore, should not be granted.

### **Disclosable pecuniary interest**

I have a "disclosable pecuniary interest" for the purpose of the Act consisting of two flats in Queen's Quay, Upper Thames Street, London EC4.

This interest has been published in my register of interests.

## **Request for a dispensation**

I hereby request a dispensation for the remainder of my term of office (which ends in March 2021) to speak and vote on any matter which affects my constituents and in which I may have a “pecuniary interest”, except for a matter which:

(a) affects me uniquely or more than any of my constituents; and

(b) insofar as regards a dispensation to vote only, falls with the restriction imposed by section 618 of the Housing Act 1985 for as long as that provision remains on the statute book;

on the ground that the grant of this dispensation is in “the interest of persons living in the authority’s area”.

## **Comments**

In addition to the general comments made in the “Introduction” above, I wish to add the following:-

I am advised that the law provides that a dispensation may be granted for up to 4 years (the length of a councillor’s term of office). I am therefore requesting a dispensation for the remainder of my current term (21 months). This will achieve parity with many other local authorities.

If a matter arises in which I have a “pecuniary interest” and which is covered by a dispensation granted in response to this request, it does not necessarily follow that I will actually speak or vote on it. In any particular case, I would use my judgment as a member as to what would be appropriate. Neither I, nor any other member, need to be directed by a small number of fellow members on the Standards Committee as to how to act as a councillor. A majority of our members are elected in predominantly business wards. This may have caused the previous Standards Committee to have so misjudged “public perception” on which it claimed to have based most of the current policy. That committee seemed to think that the public would favour a heavily restrictive approach, whereas the opposite has now been proved to be true.

Kind Regards

Brian

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## **Notes on petition and feedback from Chair of Standards Committee**

The petition was signed by 1122 residents, approximately 95% of whom gave addresses which made it possible to analyse by area. Of these 72% of signatories came from residents on the Barbican Estate and 23% from residents on the Golden Lane Estate.

The only comments received in response to the letter sent to petitioners came from the Chairs of the Barbican Association and the Golden Lane Residents' Association<sup>1</sup>. Comments and suggestions relevant to the petition and the review of our dispensations policy are summarised at appendix 1.

Both Estates fall within the Aldersgate and Cripplegate wards. The Barbican estate straddles both wards, whilst the Golden Lane Estate falls within Cripplegate. All members for these two wards live in one of them. Each ward has just one member who is not resident in the Barbican Estate, and just one of the nine members for Cripplegate lives in the Golden Lane Estate. Along with the Middlesex Street Estate, these estates differ from other parts of the City in that all freeholds are owned by the City. This means a residential DPI will tend to be engaged by any matter, such as service charge rates, which affects the entire estate, and voting on housing matters is prohibited under Section 618 of the Housing Act 1985.

Given 14 of the 16 members for the two wards are Barbican residents, it is unsurprising that there is considerable concern that resident members are able to ensure that the interests of their constituents are represented.

Members represent their constituents in a number of ways - most commonly by taking account of their concerns in policy making, by writing in support of, or objection to, licensing and planning applications, by monitoring ward matters, including construction projects, and environmental issues, by pursuing a constituent's individual concerns, and by lobbying other members or officers or

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<sup>1</sup> The first email was sent to me and copied to all members for Aldersgate and Cripplegate, and the second sent to all members of the Standards Committee.

external agencies, on behalf of constituents. Other than speaking or voting in policy making, none of these activities are limited by having an engaged DPI.

For most resident members, with engaged DPIs, the need for dispensations arises primarily in relation to speaking and/or voting on planning or licensing applications. It is recognised that members living in the areas they represent will tend to be particularly well placed to inform debate and, under current policy, non members of these two committees, with engaged DPIs, will usually be given a dispensation to speak as a member of the public, for up to four years. They and members of the committees, with engaged DPIs, alike will also usually be given dispensations to speak, as members, at a particular meeting. Petitioners would like to see a blanket dispensation for all members, to be able to speak, throughout their term of office, on any matter, in which they have an engaged DPI, other than where their property is uniquely affected or more affected than other properties.

In terms of voting, members of the Licensing Committee are not allowed to sit on panels considering applications in the wards they represent, so the opportunity, for members with an engaged DPI, to vote will rarely arise.

Petitioners are requesting the ability of committee members (in practice most likely to be of the Planning and Transportation Committee (P&TC), Community and Children's Services Committee (C&CS) and the Barbican Residential Committee (BRC) to be able to vote, other than where their property is uniquely affected or more affected than other properties.

The P&TC and C&CS are ward committees, currently with 35 and 31 members, respectively. Each ward, depending on its size, can nominate one or two members to these committees<sup>2</sup>. Should members, with an engaged DPI, be able to vote, their vote would only tend to be significant if there were a relatively close division of

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<sup>2</sup> Some wards choose not to use their allocation and places become available to other members. C&CS currently has a number of vacancies and has six members from Aldersgate and Cripplegate, one of whom is a resident of Golden Lane and five of Barbican. P&TC has no vacancies and four members from Aldersgate and Cripplegate, one of whom is a resident of Golden Lane and three of Barbican.

opinion amongst members of that committee. By the same token, in this situation, members with an engaged DPI could be seen to be determining the outcome.

The same situation could arise with most committees, on which it is unusual to have other than a small proportion of members from any given ward.

The only major exception is the BRC<sup>3</sup>. Currently 9 out of 14 members of the committee are both Barbican residents, and members for Aldersgate or Cripplegate<sup>4</sup>. Section 618 prevents voting on any housing matters. If section 618 were to be removed, however, a general dispensation to vote would mean that those with an engaged DPI could form the majority vote in deciding policies, including in regard to charges impacting all residents.

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<sup>3</sup> The BRC is responsible for overseeing the management of the estate and ancillary facilities. In doing so it has to take account of the views of the Residents Consultation Committee.

<sup>4</sup> BRC has an allocation of nine residents and eleven non residents, but there are usually non resident vacancies - currently six. Two of the current five non resident members are the two Aldersgate and Cripplegate members who do not live on the Barbican Estate.

**Appendix 1 - Comments and suggestions received from Chairs of Barbican Association and Golden Lane Residents Association\***

**1- When is a dpi engaged?**

The City has put a very broad interpretation on whether a dpi is engaged “in a matter.” The decision rests with individual members whether they think they have a dpi in a matter, but the atmosphere has been chilled by Standards Committee actions that imply that dpis are engaged when in fact they have not been proved to be so.

We also do not understand why there does “not have to be a financial impact on a member in order for that member to be prohibited from participating in a particular item of business.” (para 4).

On the one hand, the Localism Act is about pecuniary interests. So why is the City extending it beyond pecuniary effects? On the other hand, if the Standards Committee is serious about making the Localism Act’s prohibitions against speaking and voting apply when no financial effects are envisaged, then that opens up the possibility of infinite challenges to all members’ “interests”.

**2 - The Law allows speaking and voting where a dpi is engaged**

The City should trust members to act in accordance with the law – and assume that they will. We are aware of no cases in which a residential councillor in the City has used their office to speak or vote on a matter in order to obtain financial advantage for themselves – and be assured their electors would criticise them heavily were they to do so.

The dispensations policy should acknowledge that the law does allow members to be granted dispensations to both speak and vote on matters in which they have a pecuniary interest. It is the City’s decision not to allow members to vote in these circumstances, not the requirement of the law and not the expectation of the public.

So the policy should enable a member, on application, to be granted a dispensation for their term of office to speak and vote on any matter that affects their constituents



where they have a pecuniary interest as long as it does not affect them uniquely or more than any other of their constituents (and isn't prevented (for voting) by section 618 of the Housing Act 1985 until that is repealed).

We would like to understand more about how the policy was developed and the reasons for some elements in it. For example, at the Court meeting in December, an amendment was submitted "Amendment – That the Motion be altered to include the words "when the DPI is a lease or tenancy from the City Members may vote when the matter does not relate particularly to the Members' lease or tenancy"." This was withdrawn on the understanding that this proposal "be considered by the Standards Committee as part of their review." We have seen no evidence in the minutes of Standards Committee meetings or in their reports that the Standards Committee did consider this matter. We would like to understand why not, even though this point would be covered by a "general" dispensation.

If the Standards Committee is unwilling to consider this, then we would ask the City to set up a separate inquiry, with external experts, to draw up a reasonable policy and process.

### **3- The need to behave selflessly**

The Chair of the Standards Committee says the legislation is to ensure that members behave selflessly. That is a very broad test –much broader than the legislation. Arguably, if councillors were to behave selflessly, there would be no members on the planning committee who worked in any business to do with property development – because in general promoting development will promote the businesses of those who develop property, construct buildings, and provide legal and financial services to those who develop property, etc.

The approach taken to members having those sorts of interests (so long as the planning application does not relate to that individual's own property company or supporting services) should be that they do not have to seek dispensations to speak or vote on such matters. Yet the activity is not entirely selfless.

So what applies to business should apply also to residents. The Chair says that the working party has given a great deal of attention to the position where members live in the ward they represent.

#### **4 - What other authorities do**

Most ward councillors throughout the UK live in the ward they represent (it is the City that is odd in having a majority of councillors who do not live in the ward they represent), and it does not cause problems. Dispensations are routinely and widely granted (in some cases en bloc at the beginning of a councillors' terms of office). Of course, if a member's specific property is particularly affected, they have a "dpc in a matter" – but if the matter is one that affects a generality of their constituents and not them particularly, and their interest is declared – then they can and should be able to represent their members by speaking and voting on the matter

Ironically, the conclusion of the informal meeting of the Standards Committee that "The Standards Committee is concerned that the public criticism and lack of support shown it by the Court, could lead to a significant reputational risk to the Corporation" has to be correct. But not, as the committee thinks, because the Court has not backed it (rightly or wrongly) – but because the Standards Committee has shown no sign of understanding the criticism and why residents still feel disenfranchised. If City residents have fewer democratic rights than those who live elsewhere in the UK, that has to put the City at some reputational risk.

#### **5- Section 618 of the Housing Act 1985**

This section specifically excludes Barbican and Golden Lane members from voting on housing matters. As we understand it, this was introduced to soften a more draconian prohibition that existed at the time under the legislation that preceded the Localism Act 2011. The Localism Act 2011 should have made this section redundant, but repealing it seems to have been overlooked. Thus a more receptive response from your committee would be to undertake to seek to repeal that section. It is redundant legislation and uniquely affects City residents – and does constitute disenfranchisement compared with the rest of the country. An undertaking from your committee that it would explore how to get section 618 repealed would go some way toward restoring the confidence your committee has lost among residential voters.

## **6- Process**

We would like the City to adopt a much less elaborate policy and process in relation to granting dispensations to residential councillors to speak and vote on matters in which they may have a pecuniary interest.

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**\* The first email, sent in May in response to my original letter, which it was agreed I should send, at the May meeting of the Standards Committee, suggested I meet with the two Chairs. I responded saying I thought meetings with residents were best held after we'd reviewed the policy's first six months, but that all feedback was welcome. At that stage I could not know which other petitioners might respond, or the nature of the views they might express. I had sight of no further emails till the one sent to all members of the Standards Committee on 9 August. As you will all be aware, there was criticism of my not having met with the Chairs and you will also be aware that, at this point, I was away on holiday for the rest of the month. As I indicated in my reply, I think the Chairs had made their points very clearly and trust the summary here accurately reflects their comments and concerns.**

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