

# Standards Committee

## Policy and guidance on the granting of dispensations

### 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 and the information that should be provided in any application form. This document will also be used by the Standards Committee to ensure consistency in decision making.

#### Statement of general policy

3. 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 authority 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.**

### Disclosable pecuniary interests under the Localism Act 2011

4. 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. The following is only a summary of the position and Members should also refer to the other guidance available on disclosable pecuniary interests and the Members’ Code of Conduct.

## What is a disclosable pecuniary interest?

5. 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.

6. 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?**

7. 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.

8. 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.

9. Speaking in general terms, a Member is highly likely to have a 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.

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

10. 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. **These prohibitions apply to any form of participation, including 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 1.
11. 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. 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.

## **Granting dispensations under the Localism Act 2011**

### **The process**

12. 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").
13. 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 amount to a disclosable pecuniary interest being engaged. **Any dispensation granted is entirely permissive in nature and does not impose any restrictions on speaking or voting where no such restrictions otherwise exist.**

14. 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.

### **Timeliness of applications**

15. 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**

16. 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

17. 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.**
18. 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.
19. 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

20. The Standards Committee has decided to delegate authority to determine certain types of straightforward dispensation applications to the Town Clerk 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. Whilst one or more of the statutory grounds for granting a dispensation must still be satisfied in each case, 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. The Town Clerk may grant such dispensations for a term ending on or before the date of the next ordinary Common Council elections. 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. Likewise any Member who requires a dispensation that goes beyond these delegated arrangements must apply to the Standards Committee in the normal way.

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

21. In deciding whether to grant a dispensation under one or more of the specific statutory grounds, the Standards Committee will take into account the following (non-exhaustive) list of factors, 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 below does **not** mean that a dispensation will be granted:

#### 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 20(b) above) 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?

### Alternative means of ward representation

- (e) Where there is a reasonable expectation of ward representation, can the Member's ward be adequately represented without the dispensation being granted? For example, is another Member of the ward able and willing to attend the meeting and speak on the matter – either because they do not have a disclosable pecuniary interest, or because they have already been granted a dispensation? Are there other mechanisms through which the views of constituents could be communicated, either through the Member submitting written representations or by briefing another Member of the committee from a different ward to speak on their behalf?

### Widely held interests

- (f) 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 engaged interests

- (g) How directly engaged is the disclosable pecuniary interest? For example, whilst there may be an argument in some circumstances 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.

- (h) Is the participation of the Member in the business that the interest relates to justified by their particular knowledge, role or expertise? The potential contribution would have to 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

- (i) 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

- (j) 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

- (k) 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

- (l) 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.

## **Other related matters**

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

- 22. Applications to participate in a particular item of business may be received from more than one Member of the same ward. If one Member of the ward is granted a dispensation, this will have a bearing on whether any other Members of the ward should also be granted a dispensation – see paragraph 21(e) above. For this reason, 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**

23. 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.**
24. 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**

25. 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, 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 strong 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 paragraph 21 above. 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 on XXX.

## APPENDIX 1 – DECLARING INTERESTS AT MEETINGS

