

Committee(s)	Date:
Standards Committee	4 October 2019
Subject: Review of Dispensations Policy	Public
Report of: Michael Cogher, Comptroller & City Solicitor	For Decision

Summary

This report presents for formal consideration the discussion paper on the Dispensations Policy presented to the informal meeting of the Committee on 6th September 2019 together with the minutes of that meeting and further officer comment. These three items, together with the notes from the Chairman, should be considered together.

Recommendation

- (i) the Committee considers this report, the discussion paper, the previous minutes, Chairman's notes, petition and Wardmote resolution and reviews the Dispensation Policy, instructing officers to make such changes, if any, as it considers appropriate.
- (ii) the Committee determines whether to invite the Policy and Resources Committee, Children and Community Services Committee and Barbican Residential Committee to consider, with the advice of the City Remembrancer, taking steps to seek the repeal of s.618 of the Housing Act 1985.

Main report

1. As the Committee will be aware, the Dispensation Policy, in whatever form it takes, must appropriately balance a number of competing factors. These include the need for effective democratic representation, the interests of residents and other stakeholders and freedom of speech on the one hand, with the need to effectively manage conflicts of interests in a lawful and transparent matter, to assist members in avoiding complaints and protecting the Corporation from legal challenge and to properly apply the statutory scheme under the Localism Act 2011. The legal considerations are set out in more detail in paragraph 4(ii) of the Discussion Paper.
2. In all cases, whether granting a wide dispensation for a four year period or a specific dispensation for a single meeting the decision maker must be satisfied that the dispensation is appropriate in all the circumstances and that one of the statutory grounds is made out – usually either that the dispensation is in the interests of the inhabitants of the area or that it is otherwise appropriate in all the circumstances.

3. It must also be remembered that there is no presumption in favour of granting a dispensation. Indeed, the statutory scheme's starting point is that a member with a disclosable pecuniary interest in a matter may not speak or vote. From that position a member may seek a dispensation and an authority may grant one where a statutory ground is made out and the authority considers it appropriate in all the circumstances.

Dispensations to Speak

4. The current Policy's guiding principal reflects the will of the Court that: "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 the matter to be determined..." (Dispensations Policy paragraph 5).
5. In addition, the Town Clerk has delegated authority to grant dispensations to speak on General Housing Matters, which are widely defined at paragraph 17(c) of the Policy and on planning and licensing matters on the same basis as a member of the public (but still allowing representation of constituents).
6. The practical impact of the Policy since 1 March 2019 is set out in Appendix 4 of the Discussion Paper. Dispensation Sub-committees have been reluctant to grant dispensations applied for in very wide terms which would in the Sub-committees' view have prevented them from considering all relevant circumstances and properly applying the statutory scheme.
7. It should also be noted that that the function of granting a dispensation can only be properly exercised by the Court, a committee/sub-committee or an officer. It cannot be delegated to the member concerned either explicitly or by implication.
8. Accordingly, the Committee is invited to consider whether any changes to the current approach to speaking should be implemented.

Dispensations to Vote

9. Under the Localism Act a member with an engaged disclosable pecuniary interest may not speak or vote. A dispensation may remove the disability to speak and/or vote. The Corporation has, as it is entitled to do, concluded that allowing voting on a matter where a member has a DPI requires more careful consideration and justification than speaking for obvious reasons – the influence exercised is greater where a member votes in their clear self-interest as is the danger of challenge.
10. The current approach is to grant dispensations to vote only in exceptional circumstances. Since March two such dispensations have been granted, one in relation the City of London School for Girls' proposed expansion to allow equality of representation for Barbican residents and the other in circumstances where the Sub-committee did not believe there was a DPI engaged in the first place i.e. as a safety net.

11. In the case of resident members' whose interest arises from a beneficial interest in property it is difficult to see how an engaged DPI would not also trigger s.618 of the Housing Act 1985 in respect of a decision at a housing management committee or the rule against actual or apparent bias in the case of a planning or licensing decision (see Discussion Paper paragraph 4(b)).
12. One suggestion made on 6th September was that decisions on whether to grant dispensations should be made by the committee in question, with the benefit of advice, at the meeting in question. A written request would still have to be made. Such a change would need to be made by the Court. There are various pros and cons of such an approach. On the positive side decisions would be committee specific and dealt with on the day of the meeting. On the other hand, it would add further work for committees and inconsistencies of approach could arise. Should members wish to explore this further it may be advisable to undertake consultation.
13. The Committee is invited to consider whether any changes to the current approach to voting should be implemented.

S.618 Housing Act 1985

14. S.618 and its implications are discussed in detail in paragraph 4(b)(i) of the Discussion Paper. As will be seen it presents particular difficulties in granting a dispensation to vote on a housing management committee where a member's DPI arises from a beneficial interest in land e.g. their lease or tenancy. It is difficult to see how this type of DPI would not also engage s.618 and the member would commit an offence were they to vote notwithstanding any dispensation granted by a Dispensations Sub-committee. Whilst s.618 is clearly relevant to the Committee given that a breach of s.618 would also be a breach of the Code of Conduct its existence, since 1957, recognised in Standing Orders is not squarely within the Committee's remit. The Committee may therefore wish to refer the question of seeking repeal to the Policy and Resources Committee, and the Children and Community Services and Barbican Residential Committees who exercise housing management functions.

Procedural & Administrative Matters

15. Some of the procedural and administrative issues which revolve around the use of forms and the efficient and effective management of the process together with some changes which could be considered by the Committee are set out in paragraph 5 of the Discussion Paper.
16. One particular practical issue which has arisen is in relation to the use of the form. The current form was designed in order to assist members in putting the best case possible for a dispensation and to reduce the risk of applications being refused simply on the basis of insufficient information. In practice however some members have refused to use the form. A possible example of a considerably shorter form is therefore included at Appendix 1, although this is obviously subject to any other policy changes.

Conclusion

17. The Committee will see that whilst it retains a wide discretion as to the policy and procedure to adopt it is not an unlimited one and it must strike what it considers to be the appropriate balance between the competing needs of democratic representation and public confidence within an efficient and effective administrative system. It is therefore invited to consider the matters before it and instruct officers as appropriate.

Appendices

- Appendix 1 - Draft Short Form Application

Background Documents

- Comptroller and City Solicitor's report to informal meeting on 6 September 2019
- Chair's note to informal meeting on 6 September 2019
- Minutes of informal meeting on 6 September 2019

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