

<b>Committee(s)</b>	<b>Date:</b>
Standards Committee	24 January 2020
<b>Subject:</b> Further Review of Dispensations Policy & Leading Counsel's Opinion	<b>Public</b>
<b>Report of:</b> Michael Cogher, Comptroller & City Solicitor	<b>For Decision</b>

### **Summary**

Following the formal review of the Dispensation's Policy at its meeting on 4<sup>th</sup> October 2019 the Committee requested that further consideration be given to the possibility of simplifying the process for granting and broadening dispensations to speak (but not vote). On 6<sup>th</sup> November 2019 Mr Harrower sent an email to all members of the Committee proposing a change to the Dispensation Policy to grant what he refers to as a "general" (but not "blanket") dispensation to speak and vote for members in residential wards. In order to seek to finally resolve the matter after many months of debate, the Comptroller and City Solicitor, in consultation with the Chairman and Deputy Chairman has obtained Leading Counsel's opinion on Mr Harrower's proposal and the Dispensations Policy in general. This opinion is now presented for the Committee's formal consideration.

### **Recommendation**

That the Committee: -

1. Considers and notes Leading Counsel's Opinion.
2. Resolves to amend the Dispensation Policy in line with Leading Counsel's proposal in paragraph 55 of the Opinion as set out in paragraph 4 of this report.
3. Considers the matters set out in paragraphs 7-11 and determines what changes, if any, to make.

### **Main report**

1. The issues in question are more than familiar to the Committee and are set out in the report and background documents considered by the Committee at its meeting on 4<sup>th</sup> October 2019. Following consideration of that report the Committee resolved (draft minute) as follows in relation to the Policy:
  - (i) After considering the report, discussion paper, the previous minutes, Chairman's notes, petition and Wardmote resolutions, the Committee instruct Officers to bring back to them a report examining how the process around applying for dispensations to speak might be simplified, and how the existing delegations to the Town Clerk could be applied as broadly as possible whilst avoiding the risk of a successful legal challenge against individual Members or the City Corporation.

## **“General” Dispensations and Voting**

2. On 6<sup>th</sup> November 2019 Mr Harrower sent a proposal to amend the Policy, together with a proposed new application form, to members of the Committee. A copy is attached at **Appendix 1 and 1(a)**. As a result, in consultation with the Chairman and the Deputy Chairman, it was agreed that the City Solicitor would obtain advice from Leading Counsel not previously involved in any Corporation Standards matters to review the Policy and Mr Harrower’s proposal.
3. Accordingly, the City Solicitor instructed Phillip Kolvin Q.C., well known and respected public law counsel, to advise. A copy of the Instructions appears at **Appendix 2** and Mr Kolvin’s Opinion appears at **Appendix 3**. It should be noted that Mr Kolvin had before him the report before the Committee on 4<sup>th</sup> October 2019 including the Discussion Paper, petition and Wardmote resolutions considered at the informal meeting on 6<sup>th</sup> September 2019.
4. Members will note that Mr Kolvin considers that the existing policy is lawful and that the proposed policy is unlawful for the reasons he explains. He suggests, should the Committee be so minded, a lawful mechanism for relaxing the restrictions on voting in paragraph 57 of the Opinion. This would replace the final sentence of paragraph (b) of Appendix 3 to the Policy (“**Therefore, a dispensation to vote will only be granted in exceptional circumstances**”) with the following:

“When asked to grant a dispensation to vote the Standards Committee will carefully consider all the relevant circumstances including but not limited to”:

- (i) the impact of the dispensation on public confidence in the Corporation.
  - (ii) the impact on democratic debate and accountability of not granting dispensation.
  - (iii) the impact of the decision on the member’s interest.
  - (iv) whether the member is simply one of a large number of people similarly affected by the decision or whether they are disproportionately affected by it”.
5. The Committee will be aware that the Instructions and the Opinion were circulated to all members of the Court of Common Council at the request of the Chairman on 11<sup>th</sup> December 2019.
  6. In response, Mr Harrower sent an email to the Court on 18<sup>th</sup> December 2019 making a number of criticisms in relation to the Instructions, Opinion and some ancillary matters. That email is not reproduced here but members are referred to it for their consideration. It will be provided to co-opted members separately. Leading Counsel has again been requested to comment on the legal arguments Mr Harrower makes and Mr Kolvin Q.C.’s further advice is attached at **Appendix 4**.

## **Potential Changes to the Town Clerk’s Delegations**

7. In accordance with the Committee resolution, officers have also considered how the existing delegations to the Town Clerk could be applied more broadly. One possible area for change is paragraph 17(b) of the Policy.

This authorises the Town Clerk to grant dispensations of up to four years to speak on planning and licensing applications as a member of the public.

However, these dispensations are not currently available to Members of the Planning Committee or the Licensing Committee in relation to the business of their own committee. Instead, those Members must apply to the Standards Committee on a case by case basis. If the Committee is in favour of such a change, the Policy could be amended to include Members of the Planning Committee and the Licensing Committee within the scope of this delegation.

8. As previously mooted, another possible area for change is paragraph 17(c) of the Policy. This authorises the Town Clerk to grant dispensations of up to four years to speak on general housing matters. However, the definition of “general housing matters” does not currently include the provision of parking spaces, and private storage spaces separate from a dwelling. Members with a parking space or private storage space must apply separately to the Standards Committee for a dispensation. Again, if the Committee is in favour of such a change, the Policy could be amended to include parking spaces and private storage spaces within the scope of this delegation.

### **Time Limits**

9. The draft minutes of the meeting on 4<sup>th</sup> October 2019 record that:

Members were also in favour of setting deadlines for applications for dispensations. Notwithstanding this, it was noted that the urgency procedures already in place would be retained where necessary, such as in the case of late items of business being submitted to Committees. Guidance should also be produced on what constitutes an urgent application.

10. For reference, the current wording in paragraph 12 of the Policy is more flexible and explains that:

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.

11. Your Chairman has suggested that it ought to be a requirement that an application is received a minimum of two weeks before the dispensation is first required. Applications received after that deadline should not be considered by the Standards Committee, or by the Town Clerk under urgency, unless the need for a dispensation could not previously have been foreseen. If the Committee are so minded, the wording in paragraph 12 of the Policy could be amended accordingly.

## **Conclusion**

12. The Committee is invited to accept Leading Counsel's Opinion as a correct statement of the law, and to confirm the current Dispensations Policy as at **Appendix 5** either with or without the amendment proposed in paragraph 4 above, and to consider the matters set out in paragraphs 7 to 11 above.

## **Appendices**

- Appendix 1 - Mr Harrower's email dated 6<sup>th</sup> November 2019
- Appendix 1(a) - Mr Harrower's Revised Dispensation Application Form
- Appendix 2 - Instructions to Leading Counsel
- Appendix 3 - Leading Counsel's Opinion
- Appendix 4 - Leading Counsel's further Opinion
- Appendix 5 - Current Dispensations Policy

## **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

### **Michael Cogher**

Comptroller & City Solicitor

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Email: [michael.cogher@cityoflondon.gov.uk](mailto:michael.cogher@cityoflondon.gov.uk)

## Appendix 1 – GH email dated 6<sup>th</sup> November 2019

**From:** Harrower, Graeme <[Graeme.Harrower@cityoflondon.gov.uk](mailto:Graeme.Harrower@cityoflondon.gov.uk)>  
**Sent:** 06 November 2019 09:37  
**To:** Holmes, Ann <[Ann.Holmes@cityoflondon.gov.uk](mailto:Ann.Holmes@cityoflondon.gov.uk)>; Addy, Caroline <[Caroline.Addy@cityoflondon.gov.uk](mailto:Caroline.Addy@cityoflondon.gov.uk)>; Anderson, Randall <[Randall.Anderson@cityoflondon.gov.uk](mailto:Randall.Anderson@cityoflondon.gov.uk)>; Colthurst, Henry <[Henry.Colthurst@cityoflondon.gov.uk](mailto:Henry.Colthurst@cityoflondon.gov.uk)>; Durcan, Mary <[Mary.Durcan@cityoflondon.gov.uk](mailto:Mary.Durcan@cityoflondon.gov.uk)>; Ingham Clark, Jamie <[Jamie.InghamClark@cityoflondon.gov.uk](mailto:Jamie.InghamClark@cityoflondon.gov.uk)>; Langley, Susan (Alderwoman) <[Susan.Langley@cityoflondon.gov.uk](mailto:Susan.Langley@cityoflondon.gov.uk)>; Littlechild JP, Vivienne <[Vivienne.Littlechild@cityoflondon.gov.uk](mailto:Vivienne.Littlechild@cityoflondon.gov.uk)>; Lord, Edward (Deputy) <[Edward.Lord@cityoflondon.gov.uk](mailto:Edward.Lord@cityoflondon.gov.uk)>; Mainelli, Michael (Alderman & Sheriff) <[Michael.Mainelli@cityoflondon.gov.uk](mailto:Michael.Mainelli@cityoflondon.gov.uk)>; Newman CBE CC, Barbara <[Barbara.Newman@cityoflondon.gov.uk](mailto:Barbara.Newman@cityoflondon.gov.uk)>; Simons CC, Jeremy <[Jeremy.Simons@cityoflondon.gov.uk](mailto:Jeremy.Simons@cityoflondon.gov.uk)>; Barnes, Judith <[Judith.Barnes@cityoflondon.gov.uk](mailto:Judith.Barnes@cityoflondon.gov.uk)>; Cooke, Nick <[Nick.Cooke@cityoflondon.gov.uk](mailto:Nick.Cooke@cityoflondon.gov.uk)>; Large, Dan <[Dan.Large@cityoflondon.gov.uk](mailto:Dan.Large@cityoflondon.gov.uk)>  
**Cc:** Barradell, John <[John.Barradell@cityoflondon.gov.uk](mailto:John.Barradell@cityoflondon.gov.uk)>; Cogher, Michael <[Michael.Cogher@cityoflondon.gov.uk](mailto:Michael.Cogher@cityoflondon.gov.uk)>; Stokley, Gemma <[gemma.stokley@cityoflondon.gov.uk](mailto:gemma.stokley@cityoflondon.gov.uk)>; Duhaney, Antoinette <[Antoinette.Duhaney@cityoflondon.gov.uk](mailto:Antoinette.Duhaney@cityoflondon.gov.uk)>  
**Subject:** Dispensations: a way forward?

### To All Members of the Standards Committee

At Alderman Mainelli's suggestion, and following a discussion I had with him a couple of weeks ago, I attach a draft of a revised version of the new dispensations application form that reflects what residents have been calling for since the petition.

The revised form (on a single page) is intended to be suitable for use by all resident councillors in the City. It does not cover dispensations for non-resident councillors, but these should be very rare, because the usual statutory ground of dispensations being granted "in the interests of persons living in the authority's area" would not typically be satisfied. Non-resident dispensations could continue to be applied for on a case by case basis, perhaps using a different, more general form.

You will see how the conceptually distinct issue of the "rule against bias" is dealt with in paragraph (ii) of the attached form. The actual grant of the dispensation could repeat the statement about that rule, similar to an "informative" in a planning consent.

The form presupposes that a dispensation to vote will be granted on an equal basis to a dispensation to speak. This reflects the legislation. The fact that a member has an engaged pecuniary interest in a matter is not a reason for that member being denied a dispensation to vote on it, but rather the contrary: dispensations exist to allow a member to speak and vote in spite of having an engaged pecuniary interest, as long as their doing so is in the interests of their constituents and not just themselves (hence the exception in paragraph (a) of the dispensation in the attached form). In short, the statutory purpose of dispensations is for democracy to trump self-interest. This is different from a corporate boardroom scenario, where democratic representation is not an issue.

I attach a link to recent correspondence between the Chair of the Barbican Association and the Chair of the Standards Committee that appears on the Barbican Association's website:

<http://www.barbicanassociation.co.uk/wp-content/uploads/2019/11/Re-Disenfranchisement-again.pdf>

The case for “general” (but not “blanket”) dispensations to vote, as set out in the attached form, is made with admirable clarity in the last email in that correspondence (dated 3 November).

Regards,

Graeme Harrower



## REQUEST FOR A DISPENSATION TO SPEAK AND/OR VOTE WHERE A MEMBER / CO-OPTED MEMBER HAS A DISCLOSABLE PECUNIARY INTEREST

The granting of dispensations is a function of the Standards Committee and its Dispensations Sub-Committee. You are advised to read the policy and guidance on the granting of dispensations before completing this form.

Please complete this form electronically and email it to [declarations@cityoflondon.gov.uk](mailto:declarations@cityoflondon.gov.uk). Alternatively, paper forms can be submitted to the Committee and Member Services Team in the Town Clerk's Department, but typed forms should be provided if at all possible.

Name:

Date:

Please describe the nature of the disclosable pecuniary interest that would otherwise prohibit you from speaking and/or voting:

- I confirm that this interest is already included in my register of interests, or
- I confirm that I will register this interest within 28 days

I request a dispensation for the duration of my current term of office to enable me to speak and vote on any matter which affects my constituents and in which I have a disclosable pecuniary interest **except** for:

- (a) a matter which affects me uniquely or more than any of my constituents; or
- (b) as regards voting only, a matter which falls within the restriction imposed by section 618 of the Housing Act 1985, for as long as that provision remains in force.

This dispensation is sought on the statutory ground of its being "in the interests of persons living in the authority's area".

In requesting this dispensation, I acknowledge that:

- (i) I will use my judgment as to whether I rely on it in every case (e.g. in a matter which affects only a very small number of constituents no less than myself); and
- (ii) this dispensation does not affect the application of the "rule against bias" (which mainly applies in planning and licensing decisions).

**IN THE MATTER OF DISPENSATIONS UNDER  
S.33 OF THE LOCALISM ACT 2011**

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**INSTRUCTIONS TO LEADING COUNSEL TO ADVISE**

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1. Leading Counsel is instructed by Michael Cogher, the Comptroller and City Solicitor of the City of London Corporation, of Guildhall, London EC2P 2EJ. The Instructing Solicitor is also the Corporation's Monitoring Officer.
  
2. Leading Counsel will find enclosed the following documents: -
  - (a) City of London Corporation Members' Code of Conduct
  - (b) Dispensations Policy & Guidance ("the Policy")
  - (c) Agenda, relevant report and draft minutes of the Standards Committee meeting on 4<sup>th</sup> October 2019
  - (d) Agenda, report and draft minutes of the Dispensations Sub-Committee on 18<sup>th</sup> November 2019
  - (e) Email proposal and attachment from Mr Harrower, Common Councillor, dated 6<sup>th</sup> November 2019

**Introduction**

3. Leading Counsel is asked to advise in relation to the Corporation's Policy on the granting of dispensations to speak and vote on matters in which a member has a disclosable pecuniary interest under s.31 and s.33 of the Localism Act 2011. This Policy is the subject of criticism of a number of members and residents who favour its replacement with a policy of granting "general dispensations" in the form set out in the documents referred to in (d) and (e) above.



## **Organisational Background**

4. The City of London Corporation is a unique hybrid body, being a corporation by prescription with local authority and private functions. It is the local authority for the Square Mile. Its membership consists of 125 elected members across 25 wards. Each ward is represented by an Alderman and between 2 and 10 common councillors. The Corporation's members meet as the Court of Common Council (commonly referred to as "the Court"). Although there are a small number of Labour members, members are largely independent. There are no political groups and therefore no party whips. Seats on committees and the chairmanship of those committees are therefore determined by members and not parties. Executive arrangements and the rules on political balance do not apply.
5. Electors in Corporation elections comprise those who occupy as owner or tenant a property on the rating list in a Ward, who are resident in a Ward or who are appointed by a qualifying body (an incorporated or unincorporated body other than a partnership) occupying as owner or tenant premises in a Ward. In simple terms, businesses in the City are able to nominate a number of employees, depending on the size of the workforce to vote in Corporation elections.
6. Some Wards such as those covering the Barbican Estate and the Golden Lane Estate have significant numbers of residential electors while others, the majority, do not, being predominantly business Wards.
7. The Corporation's small geographical size, number of members and size and number of committees (its Planning and Transportation Committee consists of 35 members for example) means that resident members are more likely to have an engaged disclosable pecuniary interest in matters such as planning and housing management than their colleagues in other local authorities.

Relatively small Wards and numbers of electors compared to London Boroughs also means members wish to robustly represent their constituents and there is a strong imperative to participate rather than taking the more conventional local government approach of erring on the side of caution in cases of doubt over interests.

8. The standards arrangements under the Localism Act 2011 apply to the Corporation qua local authority and police authority only but are applied by local choice in relation to its private functions also. Local standards arrangements comprise a Standards Committee of elected and co-opted members, three Independent Persons and a separate complaints appeal committee. Dispensations are handled by a Dispensations Subcommittee with some delegations to officers.

### **The Current Policy**

9. Leading Counsel is referred to the Policy and will note that a distinction is made between dispensations to speak and dispensations to vote. In simple terms dispensations to speak will generally be granted while dispensations to vote will be granted only in exceptional circumstances.
10. Provision is made for dispensations to speak and vote on the setting of the Council Tax (to the extent necessary), dispensations to speak as a member of the public on planning and licensing matters and dispensations to speak on defined “General Housing Matters” and are effectively available “on demand” through the delegation to officers.
11. The Policy acknowledges that there are other circumstances which may prevent a member from participating in a meeting in which they have an interest, notably in circumstances where the rule against bias or s.618 of the Housing Act 1985 are engaged.

## **The Current Position**

12. There has been considerable discussion between members over the last eighteen months or so as to the approach which the Corporation should take to dispensations which has led to the adoption of the current Policy. There are a number of members, whose principal spokesperson appears to be Mr Harrower, who continue to argue for wide ranging term length dispensations which leave the decision in the hands of individual members, subject to some limitations. It is unnecessary to recount the twists and turns of the debate around the issue at the Standards Committee, Dispensations Sub-committee and generally. Suffice it to say that the current Policy was reconsidered, endorsed and retained by a narrow margin at the Standards Committee meeting on the 4<sup>th</sup> October 2019 but with the intention that further consideration be given in relation to general dispensations to speak at the next meeting. The Dispensations Sub-committee on 18th November referred the three applications for “General Dispensations” to the next Standards Committee meeting in January 2020 (whilst granting Mr Adrian Bastow’s specific application on exceptional grounds).

## **The Proposal for “General Dispensations”**

13. Leading Counsel will observe that that applications for General Dispensations and the proposed new approach amount largely the same thing. The proposed revision is to grant dispensations in residential wards in the following terms:

“for the duration of my current term of office to enable me to speak and vote on any matter which affects my constituents and in which I have a disclosable pecuniary interest **except** for:

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

(b) as regards voting only, a matter which falls within the restriction imposed by section 618 of the Housing Act 1985, for as long as that provision remains in force.

This dispensation is sought on the statutory ground of its being “in the interests of persons living in the authority’s area”.

In requesting this dispensation, I acknowledge that:

(i) I will use my judgment as to whether I rely on it in every case (e.g. in a matter which affects only a very small number of constituents no less than myself); and

(ii) this dispensation does not affect the application of the “rule against bias” (which mainly applies in planning and licensing decisions)”.

## **Concerns**

14. The proposal is clearly carefully crafted and, on its face, will have attractions for many Members, not least because it will put to rest a time-consuming policy debate and greatly reduce the need for meetings of the Dispensations Sub-committee. However, the Instructing Solicitor is concerned that proposal runs the risk of breaching a number of fundamental public law principles.

i. It fails to properly give effect to the statutory scheme. S.33(2) explicitly provides that a dispensation can only be granted on one of the statutory grounds where the authority has had regard to all relevant circumstances. The breadth and duration could preclude the authority from considering the specific circumstances of any given case, for example by assessing the likely impact of the decision on the members’ interest and the extent to which it affects the member to a greater or lesser extent than other residents.

Alternatively, it could be seen as an attempt to evade or disapply the statutory scheme and therefore amount to the exercise of powers for an improper purpose.

- ii. It could preclude the Corporation from making appropriate inquiries in any given scenario thus failing to satisfy its Tameside duties and amount to a failure to take into account all relevant circumstances leading to Wednesbury irrationality.
- iii. It amounts to a fettering of discretion.
- iv. Whilst it is for a member to decide whether they have a DPI in a matter, once they have done so it is for the authority to determine whether a dispensation can and should be granted under the statutory scheme. The proposal, it seems to the Instructing Solicitor could therefore be seen as an unlawful delegation to a member.

### **Advice Sought**

15. Accordingly, Leading Counsel is asked to advise in writing: -
- (a) as to whether the proposed approach to “General Dispensations” advocated by Mr Harrower is lawful and if so as to the risk of successful challenge if adopted;
  - (b) generally.

Leading Counsel should note that these instructions and the advice received will be made public.

16. Should Counsel wish to discuss any matters arising from these instructions please contact the Comptroller and City Solicitor, Michael Cogher (tel: 020 7332 3699, email: [michael.cogher@cityoflondon.gov.uk](mailto:michael.cogher@cityoflondon.gov.uk)) who has conduct of this matter.

**Michael Cogher**  
**Comptroller and City Solicitor**  
**6<sup>th</sup> December 2019**

**IN THE MATTER OF DISPENSATIONS UNDER  
S.33 OF THE LOCALISM ACT 2011**

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INSTRUCTIONS TO LEADING  
COUNSEL TO ADVISE

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TO THE CLERK OF  
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affects the member, and also the extent to which it affects other residents. The proposed dispensation is so wide as to make any sensible inquiry on the topic impossible to achieve.

51. A third and related point is that the motive driving the proposed dispensation is to enable the member to speak and vote in every conceivable case unless s/he is uniquely affected by the decision. But the powers have been conferred with the purpose of furthering the statutory scheme.<sup>5</sup> This dispensation does not further the scheme but essentially frustrates it, and is unlawful for that reason.<sup>6</sup>
52. A fourth difficulty is that the dispensation applies to matters “which affect my constituents”. However, there is no mechanism for determining whether a matter does affect the constituents. In the search for a formulation so general as to loosen the strictures of the statutory scheme, a term has been introduced which is of uncertain application. This is not only likely to frustrate the statutory scheme, but it would be irrational to grant a dispensation which is uncertain. It must also be recalled that the provisions create criminal offences pursuant to section 34. It must, therefore, be certain when an offence is committed.<sup>7</sup> Here, however, the definition of the circumstances in which a dispensation applies creates uncertainty.
53. A fifth possible difficulty, also referred to in my instructions is that the policy would arguably amount to a fettering of discretion.<sup>8</sup> I think the criticism may be apt, but in reality it would depend on precisely how the policy is framed. I think that a more problematic issue is that referred to above – it is essentially an abdication of the responsibilities placed upon the Corporation to make balanced judgments on the topic of dispensations.
54. A sixth possible difficulty is that the policy seems to place responsibility in the hands of the member, which is an unlawful delegation of power.<sup>9</sup> Again, I am not entirely sure that, properly analysed, this is a real problem. It is always open to a member to decide whether to rely on the dispensation. The problem would arise if the Corporation treated the ability of a member to ignore the dispensation as a relevant

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<sup>5</sup> *R v Tower Hamlets LBC ex p Chetnik Developments Ltd* [1988] AC 858.

<sup>6</sup> See *Padfield v Minister for Agriculture, Fisheries & Food* [1968] AC 997, 1030 B-D.

<sup>7</sup> *Kokkinakis v Greece* (1993) 17 EHRR 397 at [52], as applied in *R v Rimmington* [2005] UKHL 63.

<sup>8</sup> *R v Secretary of State for the Home Department ex p Venables* [1998] AC 407, 496G-497C.

<sup>9</sup> *R v Tower Hamlets London Borough Council, ex p Khalique* (1994) 26 HLR 517, 525.

circumstance. It cannot be relevant to a decision whether to grant a dispensation that the member may choose to ignore it. His ability does not amount to a delegation – lawful or unlawful – but to rely on it would mean that the Corporation had unlawfully taken into account an irrelevant circumstance.

55. A seventh difficulty, which is not free-standing but exacerbates some of the other issues, is that the policy makes no distinction between speaking and voting. I understand there to be a belief that the two stand or fall together. I do not think this is right at all. Speaking out on a topic is completely different from exercising a vote in relation to it. The former is to contribute to the debate, the latter is to exercise power. The policy should respect, reflect or at least refer to that distinction, not ignore it.
56. It does not matter whether one, two or all of the above difficulties are correctly stated. If any one of them is correctly stated, the proposed policy is unlawful. I have no doubt at all that at least one of the issues identified above is fatal. For that reason, I am clear that the proposed policy is unlawful.

#### **A different solution**

57. I believe that one of the chief sources of contention is that the policy says it will be exceptional for there to be a grant of a dispensation to vote. As I have said, there is nothing wrong with the policy. But if my client wishes to relax it to some degree it could revise the policy to say that a dispensation so as to permit the member to vote is more likely to risk public confidence in the Corporation's decision-making process than a dispensation to permit the member to speak. When asked to grant a dispensation to permit the member to vote, it will carefully consider all relevant circumstances, including but not limited to: (i) the impact of a dispensation on public confidence in the authority; (ii) the impact on democratic debate and accountability of not granting dispensation; (iii) the impact of the decision on the member's interest, and (iv) whether the member is simply one of a large number of people similarly affected by the decision or whether they are disproportionately affected by it. In my judgment such a policy would be lawful, since it would point to particular factors which are likely to be in play in a dispensation decision regarding voting, without going so far as to say that a dispensation should be exceptional.

## **Conclusion**

58. In this advice, I have stated my opinion that the existing policy is lawful and the proposed policy unlawful. I have suggested a form of words which might go some way to mediate between proponents of the old and the new. No doubt there are other formulations which would have a similar effect.
59. If I can assist in any other way, including by giving my view on alternative formulations, I would of course be glad to do so.

**PHILIP KOLVIN QC**  
**11<sup>TH</sup> December 2019**

**Cornerstone Barristers**  
**London WC1**

## Annex

<b><i>Subject</i></b>	<b><i>Prescribed description</i></b>
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M.
	This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
Contracts	Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority—
	(a) under which goods or services are to be provided or works are to be executed; and
	(b) which has not been fully discharged.
Land	Any beneficial interest in land which is within the area of the relevant authority.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
Corporate tenancies	Any tenancy where (to M's knowledge)—
	(a) the landlord is the relevant authority; and
	(b) the tenant is a body in which the relevant person has a beneficial interest.
Securities	Any beneficial interest in securities of a body where—
	(a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and
	(b) either—
	(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or
	(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

## **Appendix 4 – Leading Counsel's further advice**

### **IN THE MATTER OF DISPENSATIONS UNDER SECTION 33 OF THE LOCALSIM ACT 2011**

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#### **ADVICE (2)**

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#### **Introduction**

1. On 11<sup>th</sup> December 2019 I gave written advice on the subject of dispensations under section 33 of the Localism Act 2011.
2. Since then, Councillor Harrower has commented upon my advice, in an email dated 18<sup>th</sup> December 2019 and addressed to all members together with a number of officers. I am asked for my views upon his comments.
3. Councillor Harrower has helpfully divided his comments into four sections, and I shall adopt both his categorisation and numbering in this advice.

#### **(1) Partial instructions / partial opinion**

4. It is suggested that my instructions were incomplete, in the sense that they omitted important facts and mischaracterised other facts which, it is said, affects the validity of my opinion. Five instances are cited.

##### *(a) Public confidence*

5. First, it is said that a local petition called for reforms enabling councillors to speak and vote on matters in which they have a declared interest, unless the matter uniquely or especially affects them. The petition read:

*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.*

6. The fact that the petition was framed in terms of public confidence is said to undermine my legal view that part of the reason for having a system of DPIs and dispensations is to maintain public confidence in the democratic system. I do not believe that it does so, any more than knowledge that no residents much care whether their councillors speak or not would have led me to the opposite legal conclusion. I was expressing my legal view as to the purpose of the system.
7. Turning to the instant facts, I do understand that many local residents may feel strongly that they wish their elected representative to be able to speak and vote on matters which affect them, even if the representative has a DPI. That, however, does not necessarily lead to the conclusion that there must be a general dispensation in the exact form demanded. It is precisely because there may be instances in which the inability of the member concerned to speak or vote would lead to democratic failure that the dispensation regime was created. However, the careful check and balance required by that regime is not satisfied by a near open-ended dispensation which places decision-making as to whether they intend to speak or vote despite their DPI entirely in the hands of the member. Equally, however, I see that there might be a desire for the policy to be relaxed to some degree, and so suggested a form of wording to achieve such relaxation in paragraph 57 of my advice. The fact that a relaxation was called for by a number of residents serves to confirm rather than weaken my view on the topic.

(b) “Statutory scheme”

8. Second, issue is taken with my view that the starting position is that the member with a DPI in an item under discussion is not entitled to speak or vote, with that position being subject to the ability to apply for a dispensation.
9. Councillor Harrower disagrees with that formulation, saying that the starting proposition is that the member should not participate, but that a member may apply for dispensation. I have to say, with respect, that if there is a difference of substance between his formulation and mine, I have failed to discern it.
10. Based on that distinction, however, he says that the purpose of the statutory scheme is to enable elected members to speak on matters in which they have a DPI where this is in the interests of their constituents.
11. I regard that as an incomplete description of the purpose of the scheme. The purpose of the scheme is to prevent the member from speaking or voting on such matters, unless they apply for a dispensation to enable them to do so, in which case the decision-maker must approach the matter with the statutory criteria in mind. Councillor Harrower’s approach places undue emphasis on the dispensation without reference to the preceding proscription which is disapplied by grant of the dispensation. Certainly, in exercising discretion the decision-maker has to consider the interests of those living in the area, but they do so as one of a number of statutory criteria, and having had regard to all the relevant circumstances.
12. I certainly agree that there is power to grant a dispensation where the decision-maker considers this to be in the interests of local residents. I must, however, respectfully disagree that this is sufficient to support an argument that there should be some form of blanket dispensation granted without regard to all the relevant circumstances.
13. On this topic, Councillor Harrower says that the current dispensations policy is characterised by a reluctance to grant dispensations. I have suggested a somewhat more relaxed approach, should my client care to adopt it.



*(c) Mischaracterisation*

14. It is suggested that reference in my instructions to unlawful delegation is incorrect, with the suggested error carried forward into my opinion. I must respectfully disagree. As paragraph 54 of my advice made clear, this was not a factor in my opinion.
15. Under this heading, Councillor Harrower also suggests that some phraseology in my instructions as to whether the general dispensation he suggested may amount to the exercise of powers for an improper purpose may have led me into error.
16. I can only give assurance that this is not so. I analysed the matters raised in my instructions and gave my own, independent opinion upon them. While I agreed with the thrust, I did not agree with every word, as paragraphs 53 and 54 make clear.

*(d) Inoperability*

17. It is suggested that anything other than the most general of dispensations is inoperable because of logistical considerations regarding the timing of publication of agendas and convening of committees. As to that, I would say that it is for my client to ensure that the scheme of dispensations is operable. If it is inoperable as it stands (and I make no presumption on that topic), it is no answer to grant a dispensation in such general terms as to be unlawful.
18. Furthermore, the suggestion appears to view the choices as binary: either a case by case dispensation considered at the last minute or a near blanket dispensation granted for several years. As section 33(1) says, a dispensation can be granted in respect of cases described in the dispensation. There is nothing in principle wrong with a dispensation in respect of defined cases. What is wrong, as I have advised, is a dispensation which is so widely framed that it turns the statutory scheme on its head.

*(e) Corporation self-interest*

19. It is suggested that a specific reference to Councillor Harrower as an advocate of the proposed change of approach may have indicated to me that that I was being asked to compose a robust opinion to stymie him.

20. As a barrister advising a public authority, my function is to take a neutral, objective approach. It is a different approach to that of a barrister seeking to make a case in court, when the purpose is to persuade the court of a particular view of the law or facts. My advice represents my independent, objective view of the law.
21. For these reasons, I am unable to accept Councillor Harrower's conclusion that "partial instructions have resulted in a partial opinion", whichever connotation of the word partial is adopted.

**(2) No opinion should be treated as a "trump card"**

22. In this section, Councillor Harrower states that members should not automatically accept an opinion by Queen's Counsel as a definitive statement of the law.
23. That must be correct. Lawyers, like anyone else, are capable of being wrong. I would not wish any advice of mine to be treated as *ex cathedra*. If it were, there would be no need for this follow-up advice. It would be a sufficient response to say "Counsel has advised."
24. However, there is a distinction between "could be wrong" and "is wrong". In my advice, I have taken care to set out my reasoning, so that the correctness of the conclusions may be tested. I stand by those conclusions, even in the light of Councillor Harrower's critique.

**(3) Inconsistency in approach**

25. In this section, Councillor Harrower suggests that the City Solicitor has taken inconsistent approaches at different meetings.
26. It is of course very difficult for me to pronounce upon this, without chapter and verse as to the facts. However, I hope that the following comments of mine are helpful.
27. First, if the City Solicitor said that policy is a relevant matter but an authority may depart from it for good reason, that is an accurate statement of very well-established legal principle.
28. Second, if an authority adopted a policy never, or always, to grant dispensations, that would be unlawful, since it would amount to a failure of discretion.

If history showed that an authority never or always granted dispensations that would be evidence of a failure of discretion, or a misunderstanding of the power to grant dispensations, although it would not necessarily be unlawful, since it might merely demonstrate that all the cases which had arisen justified the particular conclusions reached. For example, if every time members applied for dispensation they did so in the most modest terms reflecting the statutory criteria, it would not be unlawful to grant the dispensation in each and every case.

29. Third, I also agree with the proposition advanced by the City Solicitor at the Dispensations Sub-Committee on 4<sup>th</sup> September that it is open to members to make broad applications which then fall to be judged against the statutory criteria.
30. However, none of this leads to the conclusion that the proposed dispensation set out in paragraph 40 of my first advice is lawful. In my view, it is unlawful for the reasons I gave.

#### **(4) Lack of independence**

31. In this section, Mr. Harrower suggests that the City Solicitor lacks sufficient independence to be involved in the resolution of these issues. I hope it is sufficient for me to say that I am entirely independent of all parties to these discussions, and have provided my independent legal view. In making the suggestion at paragraph 57, I tried to recognise the sensitivities of the matter, and to be constructive and helpful to all parties to the debate.
32. I believe that this deals with all the further matters which have been raised. But if I have omitted anything material, I would of course be glad to rectify the deficiency.

**PHILIP KOLVIN QC**  
**8<sup>th</sup> January 2020**

**Cornerstone Barristers**  
**London WC1**

# **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.

## **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**

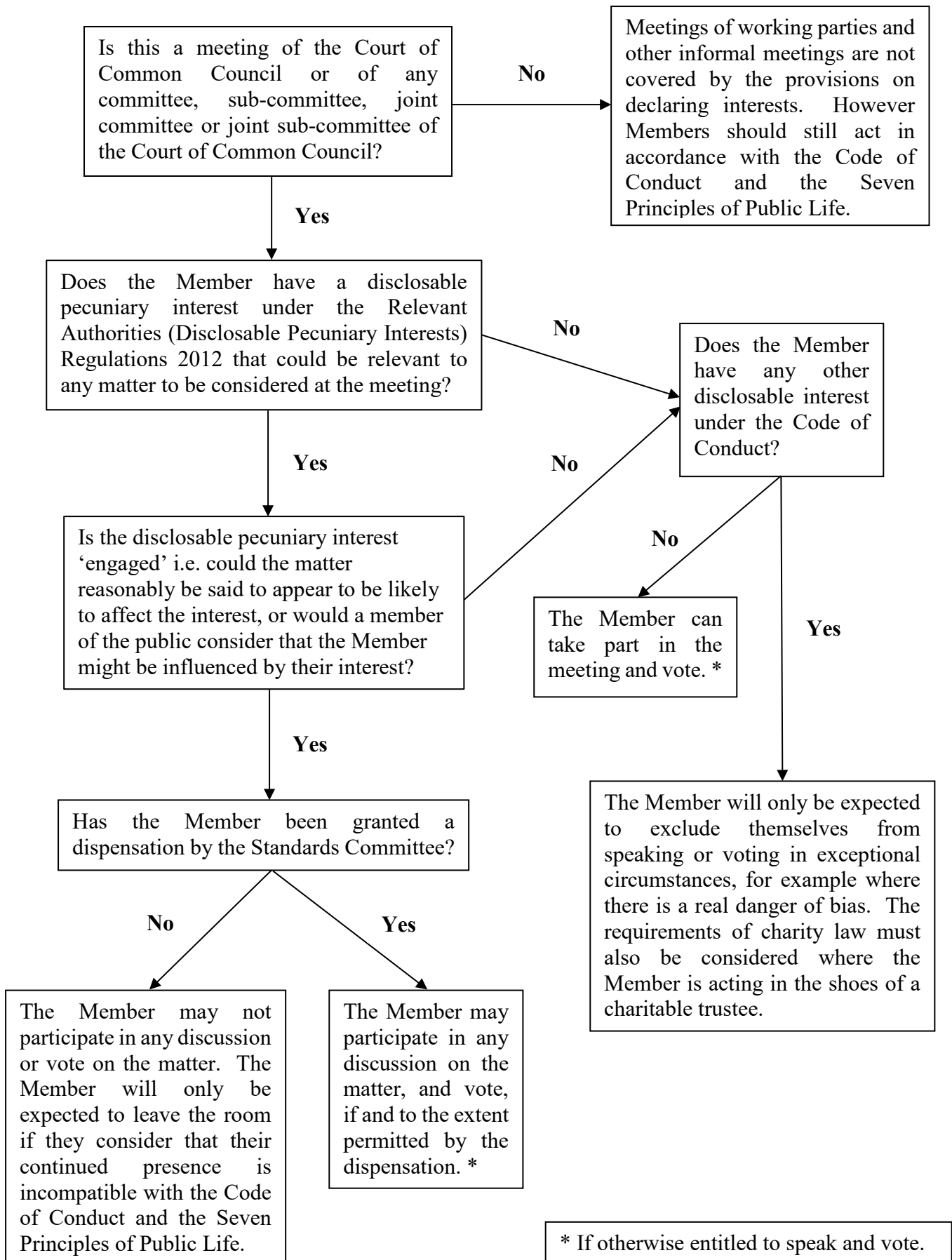
8. A Member who is present at a meeting of the City Corporation, and who has a disclosable pecuniary interest relating to any business being considered, must not participate in any discussion of the business at the meeting, or participate in any vote taken on the matter at the meeting. If a Member becomes 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**

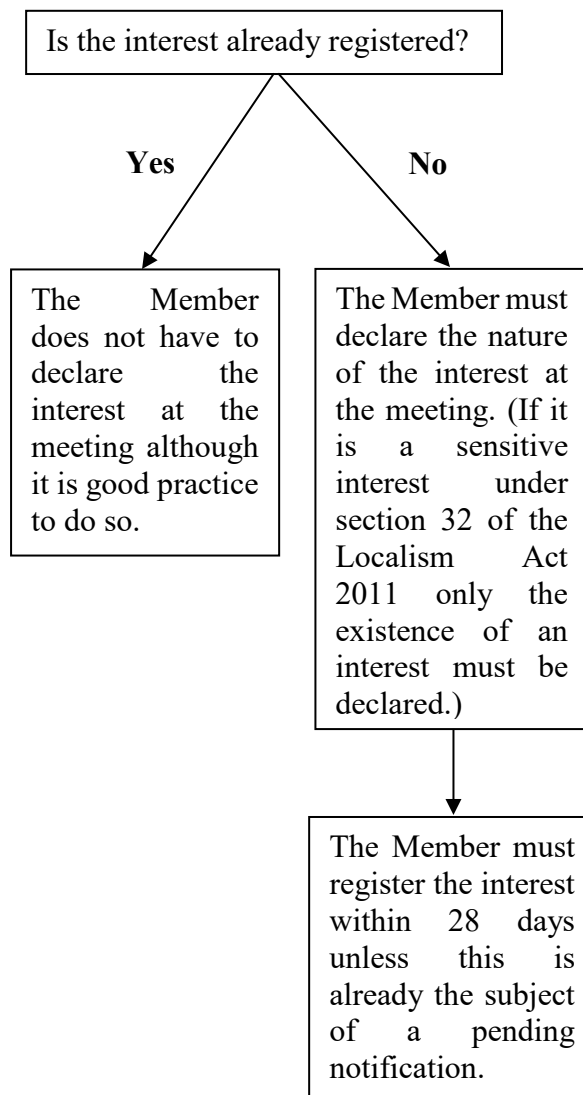
11. The full text of the Members' Code of Conduct and additional guidance can be found at the following link: <https://www.cityoflondon.gov.uk/about-the-city/how-we-make-decisions/Pages/corporate-governance.aspx>. Members are advised to seek advice from the Monitoring Officer or the Town Clerk if they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