

<b>Committee:</b> Standards Committee	<b>Date:</b> 6 October 2017
<b>Subject:</b> Dispensations in relation to the setting of council tax	<b>Public</b>
<b>Report of:</b> Comptroller & City Solicitor	<b>For Information</b>
<b>Report author:</b> Edward Wood, Chief Solicitor	
<b>Summary</b>	
<p>Members must make their own decision on whether to apply for a dispensation in order to speak or vote on the setting of council tax, where they have a home within the City. The Department for Communities and Local Government has issued guidance stating that this is not necessary. However, this Committee should continue to consider such requests when received.</p>	
<b>Recommendation:</b>	
<p>Members are asked to note the report.</p>	

### **Main Report**

#### **Background**

1. At the last meeting of this Committee on 19 May 2017, Members requested that the Comptroller & City Solicitor produce a report on the need for dispensations in relation to the setting of council tax.

#### **Position under the Localism Act 2011**

2. Members will know that 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. The disclosable pecuniary interest that is potentially engaged in relation to the setting of council tax is:-
  - (a) any beneficial interest in land which is within the area of the relevant authority.
3. The Localism Act 2011 does not provide any additional guidance on judging whether a disclosable pecuniary interest is engaged or not. It simply states that the prohibition on speaking or voting on a matter is engaged 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.
4. A Member commits a criminal offence if, without reasonable excuse, they participate in any discussion or vote on any matter in which they have a disclosable pecuniary interest. 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).
5. Members will also know however that 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. The granting of such dispensations is a function of this Committee and its Dispensations Sub-Committee. A relevant authority 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.

## Comparison with previous regime

6. The previous standards regime under the Local Government Act 2000 expressly allowed Members to vote on a number of matters in which they would otherwise have had a 'prejudicial interest' (the equivalent of a disclosable pecuniary interest). In the context of a beneficial interest in land in an authority's area, this included business relating to the functions of the authority in respect of:-
  - (a) housing, where the Member was a tenant of the authority, provided that those functions did not relate particularly to their tenancy or lease;
  - (b) setting council tax or a precept under the Local Government Finance Act 1992.
7. Given the absence of an equivalent provision in the Localism Act 2011 it was initially assumed that dispensations would be required to speak or vote on such matters under the new arrangements. Consequently, when Members were first advised in writing about the new arrangements, and the need to apply for a dispensation in certain circumstances, these areas were both highlighted on the relevant application form.

## Guidance from DCLG

8. However the Department for Communities and Local Government (DCLG) subsequently produced a guide for councillors on 'Openness and transparency on personal interests'. The relevant section of the guidance states that:-

***Do I need a dispensation to take part in the business of setting council tax or a precept?***

*Any payment of, or liability to pay, council tax does not create a disclosable pecuniary interest as defined in the national rules; hence 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.*

*If you are a homeowner or tenant in the area of your council you will have registered, in accordance with the national rules, that beneficial interest in land. However, this disclosable pecuniary interest is not a disclosable pecuniary interest in the matter of setting the council tax or precept since decisions on the council tax or precept do not materially affect your interest in the land. For example, it does not materially affect the value of your home, your prospects of selling that home, or how you might use or enjoy that land.*

*Accordingly, you will not need a dispensation to take part in the business of setting the council tax or precept or local arrangements for council tax support, which is in any event a decision affecting the generality of the public in the area of your council, rather than you as an individual.*

9. The final paragraph of the DCLG guidance does seem to assume that a decision in relation to the level of council tax will affect the generality of Members and the electorate of a relevant authority, which is not the case in relation to the City Corporation. However, Members will note that the main rationale for the DCLG position is not predicated on this point.

### **Current position**

10. Following the circulation of the DCLG guidance this Committee updated the application form for applying for a dispensation and specific reference to the need for resident Members to apply for a dispensation to speak or vote on the setting of council tax was removed. However this Committee has continued to consider written requests for a dispensation in relation to the setting of council tax where received, and such applications have been deemed to meet the relevant criteria for granting a dispensation.
11. Officers submit that this is the correct approach – not to actively invite applications in relation to the setting of council tax, but to consider them on request. Although the DCLG guidance will provide much comfort to Members, it is not definitive, and the document specifically advises individuals to seek their own legal advice if necessary on the matters raised. Any guidance issued by this Committee on the subject would similarly not be definitive.
12. Although the prosecution of a Member with a home in the City for speaking or voting on the setting of council tax without a dispensation is highly unlikely to be deemed to be in the public interest by the DPP, given the public pronouncement by DCLG – even supposing that the DPP were to view this as a breach of the relevant statutory provisions – this cannot be absolutely guaranteed. In the circumstances, and given the criminal nature of any breach, Members should be entitled to apply for a dispensation should they wish to have greater assurance on this point.

### **Conclusion**

13. It would be disproportionate for this Committee to actively encourage Members of the City Corporation to apply for a dispensation where they have a home in the City and wish to speak or vote on the setting of council tax, given the national guidance from DCLG on this issue. However this Committee should continue to consider a request for such

a dispensation where received, in order to provide additional assurance to the Member concerned.

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