

those Report of the City Solicitor

Report to the Chief Executive

Date: 10th May 2016

Subject: Application for dispensation under Section 33 of the Localism Act 2011

Are specific electoral Wards affected? If relevant, name(s) of Ward(s): n/a	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: n/a Appendix number: n/a	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

The purpose of this report is to seek a dispensation for new Members elected in the 2016 elections allowing them to take part in any discussion and vote relating to any office they hold within Leeds City Council for which they receive a taxable income, and any office held outside Leeds City Council (to which they have been appointed by Leeds City Council) for which they receive a taxable income. It is proposed that this dispensation be granted for a period to expire on 9th May 2017.

Recommendations

The Chief Executive is recommended to grant a dispensation to those Leeds City Councillors who are signatories to the attached application Schedule, who have a disclosable pecuniary interest arising through:

- Any office held within Leeds City Council for which they receive a taxable income; and
- Any office held outside Leeds City Council (to which they have been appointed by Leeds City Council) for which they receive a taxable income,

from both restrictions in section 31(4) to allow them to take part in any decision relating to one of these positions.

1 Purpose of this report

- 1.1 The purpose of this report is to seek a dispensation for those Leeds City Councillors who are signatories to the attached application Schedule, (“the new Members”) allowing them to take part in any discussion and vote relating to any office they hold within Leeds City Council for which they receive a taxable income, and any office held outside Leeds City Council (to which they have been appointed by Leeds City Council) for which they receive a taxable income. It is proposed that this dispensation be granted for a period to expire on 9th May 2017.

2 Background information

- 2.1 All elected Members are obliged to notify the Monitoring Officer of their disclosable pecuniary interests so that they can be entered into the Register of Interests. Furthermore, Members must not take part in any decision in which they have a disclosable pecuniary interest. One of the categories of disclosable pecuniary interests is:

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

- 2.2 Under the previous Code of Conduct Members were able to rely on a specific exemption which allowed them to take part in any matter relating to an allowance, payment or indemnity for Members. As the previous standards regime has been abolished Members are no longer able to rely on this exemption.
- 2.3 On 10th May 2013 the Chief Executive granted a dispensation to all Councillors allowing them to take part in any discussion and vote relating to any office they holds within Leeds City Council for which they receive a taxable income, and any office held outside Leeds City Council (to which they have been appointed by Leeds City Council) for which they receive a taxable income for a period of four years. Similar dispensations were granted in 2014 and 2015 for those Members newly elected to Leeds City Council in those years to terminate on the same date as the dispensation for existing members.

3 Main issues

- 3.1 In a letter written by Mr Brandon Lewis MP (Parliamentary under Secretary of State for the Department of Communities and Local Government) to Mr Desmond Swayne MP on 4th January 2013, Mr Lewis states that generally he would remark that:

“a member being in receipt of taxable members’ allowances may be considered to give rise to a disclosable pecuniary interest under the subject of ‘Employment, office, trade or vocation’ set out in the regulations. Whether a Councillor who wishes to participate in the discussion or voting on an item of council business related to the other authority of which he is a member needs to apply for a dispensation will depend on what is to be discussed, but if a councillor is concerned because they have registered their membership of the other authority

as a disclosable pecuniary interest, they may wish to apply for a dispensation, and have one granted, to put the matter beyond doubt.”

- 3.2 He further suggests that councils could consider granting “standing dispensations’ for the whole of the member’s term of office for certain recurring items of council business where it is foreseen that one of the grounds for granting a dispensation set out in the Act will be met. This could apply in the case of a dual-hatted member who has specialist knowledge of a matter which would be relevant to a discussion or decision and where that member does not stand to make a personal financial gain by being granted a dispensation.”
- 3.3 As a result of this letter the Monitoring Officer sought permission from all elected and voting Members of Leeds City Council to include such positions in their register of interests, to which they agreed.
- 3.4 Furthermore, the Monitoring Officer recommended that each elected Member was granted a dispensation to allow them to take part (including voting) in any decision relating to one of these positions. In accordance with this recommendation Members applied for a dispensation which was granted on 10th May 2013.
- 3.5 In the Local Government Elections held on 5th May 2016 the new Members were elected to Leeds City Council. As they were not included in the original dispensation they now make such application. It is proposed that such dispensation should run until 9th May 2017, thus expiring at the same time as the dispensation granted to all other Members of Leeds City Council in relation to the same matter.

Application for dispensation

- 3.6 Section 31(4) of the Localism Act 2011 sets out that where a Member is present at a meeting of the authority and has a disclosable pecuniary interest in any matter to be considered, they may not:
- Participate, or participate further, in any discussion of the matter at the meeting, or
 - Participate in any vote, or further vote, taken on the matter at the meeting.
- 3.7 If a Member fails to comply with these requirements, they would potentially commit a criminal offence.
- 3.8 However, a relevant authority may, following a written request made to the proper officer (the Monitoring Officer) by the Members concerned, grant a dispensation relieving the Members from either or both of the restrictions set out in Section 31(4). Schedule 1 is an application from 98 Leeds City Councillors requesting a dispensation in relation to this issue.
- 3.9 In Leeds the responsibility for granting dispensations has been delegated to the Head of Paid Service. The Head of Paid Service may grant a dispensation only if certain conditions are met. The following conditions would apply in this case:

- Without the dispensation the number of persons prohibited by section 31(4) from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of that business; and
- Granting the dispensation is in the interests of persons living in the authority's area.

3.10 The dispensation must specify the period for which it has effect, which must not be greater than four years. It is proposed that in this case a dispensation is granted for a period to expire on 9th May 2017.

4 Corporate Considerations

4.1 Consultation and Engagement

4.1.1 According to Article 12 of the Council's Constitution, the Head of Paid Service must consult the Chair of the Standards and Conduct Committee before determining requests for dispensations. The Chair of the Standards and Conduct Committee has been consulted on this matter by the Deputy Monitoring Officer, and agrees that it is appropriate to grant a dispensation in the circumstances.

4.2 Equality and Diversity / Cohesion and Integration

4.2.1 There are no issues for equality and diversity or cohesion and integration.

4.3 Council policies and City Priorities

4.3.1 There are no implications for Council policies or City Priorities.

4.4 Resources and value for money

4.4.1 There are no implications for resources or value for money.

4.5 Legal Implications, Access to Information and Call In

4.5.1 The legal implications on this report are set out in section 3.

4.6 Risk Management

4.6.1 If a dispensation is not granted Members would not be able to vote on issues such as the Members' Allowances Scheme, or on appointments to internal or external positions. This could particularly present a problem at the first Community Committee meetings held annually where a new Chair is elected.

4.6.2 There is also a risk that if Members decide not to declare a disclosable pecuniary interest in the decision and continue to take part in the discussion and vote without a dispensation, any decisions taken may be open to legal challenge and the Members themselves may be at risk of having committed a criminal offence.

5 Recommendations

5.1 The Chief Executive is recommended to grant a dispensation to those Leeds City Councillors who are signatories to the attached application Schedule, who have a disclosable pecuniary interest arising through:

- Any office held within Leeds City Council for which they receive a taxable income; and
- Any office held outside Leeds City Council (to which they have been appointed by Leeds City Council) for which they receive a taxable income,

from both restrictions in section 31(4) to allow them to take part in any decision relating to one of these positions. The dispensation is to expire on 9th May 2017.

6 Background documents¹

6.1 None.

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.