

GENERAL ASSEMBLY OF THE COUNCIL
27 FEBRUARY 2017

LOCALISM ACT 2011 – DISPENSATIONS – MEMBERS’ ALLOWANCES & FINANCIAL CONTRIBUTIONS TO PARISH/TOWN COUNCILS

1. Summary

- 1.1. To note the legal advice received, that Members’ Allowances is relevant for disclosable pecuniary interest purposes and to consider ancillary matters.
- 1.2. To note that the Managing Director, in consultation with the Monitoring Officer, has granted dispensations to Members, as outlined in the body of the report.

2. RECOMMENDATIONS

- 2.1 That Members note the legal advice received, that membership of a local authority is likely to be viewed as an ‘office carried on for gain’ and that Members’ Allowances is relevant for disclosable pecuniary interest purposes when Members are asked to vote on the rate of allowances themselves.
- 2.2 That, the General Assembly of the Council notes the action taken by the Managing Director, in consultation with the Monitoring Officer, to grant dispensations to all Members, (who have registered their receipt of Members’ Allowances as a DPI and applied for dispensation) with effect 27 February 2017, for a period ending with their retirement on the fourth day after the ordinary day of election in May 2019, to speak and vote on agenda items in respect of Members’ Allowances, on the ground that so many members of the decision-making body have disclosable pecuniary interests in a matter, that it would impede the transaction of the business.
- 2.3 That, the General Assembly of the Council notes the action taken by the Managing Director, in consultation with the Monitoring Officer, to grant dispensations to all Parish/Town Councillors (who have applied for dispensation), with effect 27 February 2017, for a period ending with their retirement on the fourth day after the ordinary day of election in May 2019, to speak and vote on agenda items in respect of Section 136 Contributions, on the ground that so many members of the decision-making body have prejudicial interests in a matter, that it would impede the transaction of the business.
- 2.4 That, for the reasons outlined in the body of the report, the Members’ Allowances interest category be deleted from the Prejudicial Interest definition.

3. Background and Discussion

- 3.1 According to the Department of Communities and Local Government (DCLG), it was not the government’s intention that Members would be regarded as having a Disclosable Pecuniary Interest (DPI) (as defined by section 30(3) of

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the Localism Act 2011 (the 2011 Act) and Relevant Authorities (Disclosable Pecuniary Interests) 2012) (the 2012 Regulations) in approving Members' Allowances, hence there is no specific relieving provision in the statutory regime.

DCLG subsequently issued an 'informal' view in that any taxable allowance would give rise to a DPI and should be entered on Members' registers of interest under 'employment, office, trade, profession or vocation'.

- 3.2 Legal advice at the time did not concur with DCLG's 'informal' view. The advice was that although a councillor is likely to hold 'office', the receipt of an allowance is compensatory (relating to time spent and expenses incurred) and therefore not carried on for a profit or gain.
- 3.3 The issue of whether or not the receipt of Members' Allowances is a DPI has been raised again in legal circles. Although most councillors may receive very modest basic allowances, this is not the case for all councillors, and for some, it will be greater than their associated costs.
- 3.4 Recent legal advice has concurred with DCLG's 'informal' view. Therefore, membership of a local authority is likely to be viewed as an 'office carried on for gain'. 'Gain' will be some receipt or income, other than reimbursement for expenses.
- 3.5 Under the Council's constitutional arrangements, a Prejudicial Interest (PI) means an interest (other than a DPI) in any matter under consideration at any meeting which may reasonably be regarded as affecting a Member's financial position or the financial position of a person or body the Member is associated with:
 - (a) to a greater extent than other council tax payers, ratepayers or inhabitants of the Council's area; and
 - (b) where a member of the public with knowledge of the relevant facts would reasonably regard the interest as being so significant that it is likely to prejudice the Member's judgment.

The definition then goes on to say that a Member will not normally have a prejudicial interest, if as a member of the Council, they are given an allowance.

- 3.6 The practical implications of the recent legal advice on Members' Allowances are as follows:
 - (a) Members' Allowances will become relevant for DPI purposes when Members are asked to vote on the rate of allowances themselves. In those circumstances, Members will plainly be asked to vote on a matter where he/she has a DPI;
 - (b) Dispensation under section 33(2)(a) of the 2011 Act may be granted to cover the situation, otherwise the number of persons prohibited by section 31(4) from participating in any particular business would be so great a

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proportion of the body transacting the business, as to impede the transaction of the business;

- (c) Dispensation may be granted for a maximum period of 4 years (section 33(3));
- (d) The updating of DPI registers by Members to include the receipt of Members' Allowances;
- (e) Dual/triple hatted members (borough, county/parish/town) will be required to register *all allowances received* with each of the authorities of which he/she is a member;
- (f) The Council's adopted definition of PIs will require amendment to remove the interest category relating specifically to Members' Allowances.

3.7 In view of the legal advice referred to above and because the 2011 Act and the 2012 Regulations do not provide any relieving provisions and the criminal offence provisions at section 34 of the 2011 Act, the Monitoring Officer has asked all Members to amend their DPI register entries to include the receipt of Members' Allowances under the prescribed category 'Employment, office, trade, profession or vocation'.

3.8 Over the years, the Managing Director, in consultation with the Monitoring Officer, has granted 'one off' dispensations to all Parish/Town Councillors present at GAC meetings, to speak and vote on matters related to the Council's financial contributions to Parish and Town Councils (Section 136 Contributions), on the ground that many members of the Council had a prejudicial interest in the matter, that it would impede the transaction of business. The last dispensation was granted to Parish/Town Councillors present at the meeting of the GAC on 12 December 2016 [Min. No:59], for that meeting only.

'One off' dispensations do not represent an effective use of Council resources.

3.9 Where Members have a DPI or PI in any matter to be considered, or being considered at a meeting of the Council, Standing Order 19 and the Member Code of Conduct requires Members to declare the interest, not participate in any discussion of, or vote taken on, the matter at the meeting; and withdraw from the meeting room. Failure to declare a PI and withdraw from the meeting, is a breach of the Member Code of Conduct. Whereas failure to declare a DPI and withdraw from the meeting room, is a breach of the law (see para. 3.7 above).

3.10 The Managing Director has been granted delegated authority, in consultation with the Monitoring Officer, to grant dispensations to Members [GAC 16.07.2012:Min.No.35]. The law requires Members to apply for a dispensation individually and not as a group or Council.

3.11 The Monitoring Officer provided all Members and Parish/Town Councillors with proforma templates to apply for dispensations to speak and vote respectively, on matters relating to Members' Allowances and where applicable, Section 136 Contributions.

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Dispensations were granted:

- (a) to all Members who registered their receipt of Members' Allowances as a DPI *and* applied for a dispensation;
- (b) to all Parish/Town Councillors who applied for a dispensation on matters related to Section 136 Contributions,

with effect 27 February 2017, for a period ending with Members' and Parish/Town Councillors' retirement on the fourth day after the ordinary day of election in May 2019, on the ground that so many members of the decision-making body have respectively, disclosable pecuniary interests (in matters related to Members' Allowances) and prejudicial interests (in matters related to Section 136 Contributions), that it would impede the transaction of the business (in practice, this means that the decision-making body would be inquorate as a result).

Dispensations granted for this period, dispense with the requirement to continually grant further dispensations, when these matters come before the GAC.

4. Relationship to the Corporate Plan

The Council has an ongoing commitment to good corporate and ethical governance which supports effective decision making and an effective ethical governance framework.

5. Financial, legal, staffing and other administrative implications and risk assessments

Financial Implications	None
Legal Implications	As discussed in the body of the report
Staffing Implications	None
Administrative Implications	None
Risk Assessment	The impact of a successful challenge to this Council could be significant, particularly relating to budget decisions. The granting of a dispensation removes the risk from the Council and its Members.

6. Details of Exempt Information Category

Not applicable

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7. Appendices

Not applicable

BACKGROUND PAPERS

<u>Documents consulted</u>	<u>Date / File Ref</u>	<u>Report Author</u>	<u>Section and Directorate</u>	<u>Exempt Information Category</u>
		Marie Kelly-Stone Head of Legal Services (01322) 343634	Legal Services	N/A