

Report of the Monitoring Officer

**Dispensations**

**Summary**

1. This report provides Members with information about the dispensation provisions available under the new regime, reminds Members of existing arrangements and identifies some particular issues for consideration.

**Background**

2. The Localism Act introduces two distinct provisions for dispensations allowing Members to depart from the normal requirements. A further measure has been introduced under the recently produced Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.
3. If the Monitoring Officer considers that the registration of an interest could lead to the member or a person connected with the member, being subject to violence or intimidation then details need not be recorded in the public register.
4. Separately a member who has a disclosable pecuniary interest in a matter may be granted a dispensation allowing them to participate in the discussion and/or vote on the matter. To obtain the dispensation the Member must make a written application to his or her Authority's "Proper Officer" and it is then determined by the Authority.
5. The grounds on which an application may be granted are that:
  - a) 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) 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) granting the dispensation is in the interests of persons living in the authority's area,

(d) without the dispensation each member of the authority's executive would be prohibited by section 31(4) from participating in any particular business to be transacted by the authority's executive, or

(e) that it is otherwise appropriate to grant a dispensation.

6. For the City of York Council applications will be made to the Monitoring Officer. The previous statutory Standards Committee expressed a view that it might be appropriate to delegate powers to the Monitoring Office to grant dispensations falling within paragraphs 5 (a), (b) and (d) above. Those will be matters of fact and the decision may be made administratively. Cases falling within (c) and (e) may be considered to be quasi judicial and should be a Member decision. It may though be appropriate to delegate those decisions to a Sub Committee to enable speedier decision making.
7. The previous statutory code of conduct and, indeed, the City Council's own code contain exemptions confirming that a Member would not have a prejudicial interest in various matters including, importantly decisions in respect of functions affecting housing where the Member is a Council tenant and decisions in respect of Council tax setting functions. The Regulations in respect of disclosable pecuniary interests contain no such exemption. Similarly the NALC model code does not include an automatic exemption.
8. In relation to the budget setting process many Members will have a disclosable personal interest. They may have a partner who works for the Council, they may rent an allotment or a house. In the scheme of the overall budget such interests may be regarded as minimal (as they were previously) and it would seem appropriate for dispensations to be granted and for the Monitoring Officer to have the power to do so. Similarly, it might be appropriate to maintain a dispensation for Council tenants when participating in decisions

affecting housing generally as opposed to their property in particular.

9. This may well be less of an issue for Parish Councils but they need to be aware of it when setting their precepts and the Monitoring Officer has written to all the Parish Clerks.
10. The latest part of this jigsaw is the provision in the 2012 Access to information Regulations. These only apply to Executive decision making so not to Council or to Ordinary Committees or to Officer decisions which may fall within the remit of a Committee – such as planning or licensing issues. The important provision for this committee relates to the recording of executive decisions made at Cabinet meetings, by individual Cabinet Members and by Officers. A new requirements has been introduced which states that the decision record must include a record of certain conflicts of interest relating to the matter being decided. For Cabinet meetings the requirement applies to members of the Cabinet. For individual Cabinet Member or Officer decisions the requirement applies to any conflict declared by a Cabinet Member who has been consulted on the decision.
11. In addition to recording that declaration the record must also include a note of dispensation granted by the Council's head of paid service.
12. The term "conflict of interest" is not defined in the Regulations although it seems likely that the existence of a prejudicial interest would amount to a conflict.

### **Recommendations**

13. Members are recommended to:
  - 1) Delegate powers to the Monitoring Officer to grant dispensations in the circumstances described in the report
  - 2) Establish and delegate powers to a Sub Committee to deal with dispensations which fall outside the powers delegated to the Monitoring Officer.

Reason: To ensure that the Council business may proceed effectively

## Contact Details

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**Report**  
**Approved**

**Date** 12/11/12

**Wards Affected:** *List wards or tick box to indicate all*

**All**

**For further information please contact the author of the report**

### **Background Papers:**

None

### **Annexes**

None