

Report to Standards committee

1 February 2013

Report of Head of law and governance and solicitor to the council

Subject Members' Interests

Item

7

Purpose

To update members on the Localism Act 2011 Standards and Conduct regime and in particular on the way that members' interests are dealt with.

Recommendations

1. To receive and note the matters in the report and instruct the Monitoring Officer in relation to any actions needed including training for members in this area.
2. To recommend Council to devolve power to Standards Committee to grant Dispensations to members and
3. in urgent cases, to delegate to the Monitoring Officer the power to grant Dispensations to members with the requirements to report any such urgent grant at the next meeting of the Standards Committee.

Financial implications

None

Contact officers

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Background documents

None

Report

Background

1. Members' interests feature in both the old (Local Government Act 2000) and new (Localism Act 2011) Standards regimes but in entirely different ways.
2. The 2000 Act regime provided for "prejudicial" and "personal" interests each of which had implications for members when they were at meetings where matters relevant to those interests were under discussion. Allegations of breach of these rules were investigated in the case of serious breaches by Standards for England and in less serious cases by the authority itself.

Registration of Interests

3. Under Section 29 of the Localism Act the Monitoring Officer must establish and maintain a register of interests of members and co-opted members. However, (subject to the Regulations referred to below) it is for the authority to determine what is to be entered in the authority's register.

Localism Act 2011

4. The Localism Act 2011 made radical changes to the previous standards regime. The concept of prejudicial and personal interests was swept away and replaced with "declarable pecuniary interests" (DPIs) and "other interests".
5. The DPI is defined by Regulations and consists of the following types of interest - either on the part of the member (or co-opted member) themselves or of their spouse or partner:-
 - In relation to employment, office, trade, profession or vocation - any employment, office, trade, profession or vocation carried on for profit or gain. The profit or gain qualification is critical and effectively excludes from being a DPI all employment etc. done on a voluntary or unpaid basis - no matter how responsible or prestigious.
 - 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 the member in carrying out his or her duties as a member, or towards the election expenses of the member. 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.

The qualification in b) means that the interest is restricted to live and/or continuing contracts as opposed to contracts that have been completed.

- Land - any beneficial interest in land which is within the area of the relevant Authority. "Beneficial interest" is a legal term meaning that either you are the owner/occupier or leaseholder of such land or you derive benefit from ownership in another way, for example, if land is legally owned by another person but held on trust for you as a beneficiary
- Licences - any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer. A licence is a lesser form of interest in land than, for example, a tenancy and the interest might be on licences to use premises or to park, or to trade from a particular point..
- Corporate tenancies - any tenancy where (to the member'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.

So, for example, if the member or member's spouse or partner was a shareholder in a company which leased land from the Authority this would be a DPI.

- Securities - any beneficial interest in securities of a body where -

a) that body (to the member'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 1/100th of the total issued share capital of that body; or

ii) if the shared 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 1/100th of the total issued share capital of their class.

6. The significance of having a DPI is that in relation to any meeting at which the member is present and the DPI relates to any matter to be considered then, firstly, if the DPI is not on the member's register the member must declare it. It is recommended that, whether it is on the register or not the member declares the interest so as to explain to those present why he or she is not participating in the item. Secondly, the member must not participate in the "discussion" or vote on the matter.

The word "discussion" has been much debated. Did Parliament intend that members should be restricted only from "discussing" as opposed to expressing views or imparting information? The answer to this is unclear but nplaw is advising that in meetings where planning applications are heard, a member with a DPI may remain and make a representation or statement before ceasing participation in the meeting. This enables a member to exercise at least the same rights as the public have in

relation to that item. It may be that the law on this point will be clarified in due course. This is reflected in the City Council's Code of Conduct,

7. You will note that above I have referred to "ceasing to participate". There is no legal obligation on a member with a DPI to withdraw from the room in which the meeting is taking place. It is, however, open to authorities to adopt standing orders that do require a member with a DPI to withdraw from the room. Some authorities have done this and some Authorities have not. The City Council's Code of Conduct requires a member with a DPI to leave the room where the meeting is taking place.

Enforcement

8. One of the major differences between the old and new regimes is that the new regime makes it a criminal offence for a member with a DPI to participate or vote in a matter relating to that DPI. A person who is convicted of an offence may be liable to a fine not exceeding £1,000 and the Court may also disqualify that person from being a member of the authority or any authority for a period of up to five years. These offences would be investigated by the Police and a decision to prosecute taken by the Director of Public Prosecutions - in effect, the Crown Prosecution Service. Local Authorities have no part in the investigation or prosecution.
9. Depending upon the Code adopted by the authority in question allegations in relation to DPIs may also be a breach of the Code for which the authority itself will investigate. Its powers are, however, limited to the normal and much reduced list of sanctions now available to Local Authorities and Standards Committees.

Other Interests

10. Having put in place what some might see as rather draconian sanctions in relation to DPIs the Localism Act makes no provision at all in relation to "other interests". If an interest is not a DPI then it is up to the authority to decide what obligations it wishes to impose on a member with such an "other interest".
11. The range of "other interests" is potentially great. It could range from being an unpaid non-executive Director of a substantial organisation to being a member of a local bowls club. Neither are DPIs. Every local authority may adopt such provisions as it sees fit in relation to other interests. There are many situations in which clearly it would be prudent for a member to mention an interest which is not a DPI but which the public might feel is of such a nature that it might affect the member's view of the public interest.

Dispensations

12. The Localism Act provides for an authority to grant a dispensation to its members from the restrictions on either participation or voting or both when they have a DPI. An application must be made in writing to the proper officer of the authority but then may be dealt with by the authority itself, or by delegation, for example, to its Standards Committee or an Officer.
13. The grounds for granting a dispensation are that, 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 person living in the authority's area,
 - d) if it is a Cabinet matter that without the dispensation each member of the Cabinet would be prohibited from participating in the business or
 - e) considers that it is otherwise appropriate to grant a dispensation.
14. A dispensation must be made for a specific time period which cannot exceed four years.

Sensitive Interests

15. If a member has an interest that should otherwise be entered in the authority's register but may lead to that member being subject to violence or intimidation then details of that interest can be withheld from the register. In relation to meetings a member with such an interest need only disclose that he or she has such an interest without giving further details.

Delegations

16. For practical purposes most local authorities delegate the power to grant dispensations to the Standards Committee. Where the matter is urgent then such power can be delegated by the Standards Committee to the Monitoring Officer with the promise that any such grants are reported at the next meeting of the Standards Committee. Such delegations are recommended for the City Council.