

SC/003/13

Committee: The Essex County Council and Essex Fire Authority Joint Standards Committee

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Report of the Deputy Monitoring Officer

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Dispensations for Disclosable Pecuniary Interests, Other Pecuniary Interests and Personal Interests

1. Purpose of Report

1.1. To consider whether dispensations should be granted to all members and co-opted members of Essex County Council in certain circumstances which would enable them to take part in the business of the Council even if the member or co-opted member has a disclosable pecuniary interest, other pecuniary interest or a personal interest relating to that particular business.

2. Recommendation

2.1. To agree that the following dispensations be granted to all members and co-opted members of Essex County Council until 2 May 2013 to enable them to participate in debates and to vote on any such matter, notwithstanding that they may have a Disposable Pecuniary Interest, Other Pecuniary Interest or a Personal Interest in the business being transacted:

- (a) School meals or school transport and travelling expenses – where a member is a parent, grandparent or guardian of a child in full time education, or where a member is a parent governor of a school, unless the decision relates particularly to the school which his child attends.
- (b) An allowance, payment or indemnity given to members.
- (c) Any ceremonial honour given to members.
- (d) Setting council tax under the Local Government Finance Act 1992.
- (e) Other decisions to be made which do not affect the member's financial position or the financial position of a person or body described in paragraph 7.1(i) and (ii) of the Code of Member Conduct.

3. Background

3.1. At its meeting held on the 2 October, 2012, the Joint Standards Committee adopted a new Code of Member Conduct in accordance with the requirements of The Localism Act 2011.

3.2. The Code requires that where a member or co-opted member is present at a meeting and has a disclosable pecuniary interest, other pecuniary interest or a personal interest in a matter to be considered at that meeting then the existence and nature of that interest must be disclosed to that meeting. The effect of having an interest is dependent upon its type.

3.3. Section 31 of The Localism Act 2011 sets out the statutory requirements if a member or co-opted member is present at a meeting of their council, of its executive or any committee of the executive, or of any committee, sub-committee, joint committee, or joint sub-committee of the council and they have a Disclosable Pecuniary Interest relating to any business that is or will be considered at the meeting. Regulations specify what is a Disclosable Pecuniary Interest and these have been reflected in the ECC member code.

3.4. The statutory requirements are that the member or co-opted member must not:

- (a) participate in any discussion of the business at the meeting, or
- (b) if they become aware of their disclosable pecuniary interest during the meeting, participate further in any discussion of the business, or
- (c) participate in any vote or further vote taken on the matter at the meeting.

3.5. These prohibitions apply to any form of participation, including speaking as a member of the public.

3.6. The Code of Member Conduct requires that if a member or co-opted member has an Other Pecuniary Interest then, after disclosing to that meeting the existence and nature of that interest, the member must not participate in any consideration of or voting on the matter and must withdraw from the room or chamber where the meeting considering the matter is being held.

3.7. The Code of Member Conduct provides that if a member or co-opted member is present at a meeting of the council or its committees etc and has a Personal Interest in a matter to be considered then, after disclosing to that meeting the existence and nature of that interest the member may participate in any discussion of the business at the meeting and participate in any vote on that business.

3.8. However if the Personal Interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the member's judgement of the public interest, the member must withdraw from the room or chamber where the meeting considering the business is being held and not participate in any consideration of, or voting on, the matter.

4. Granting Dispensations

4.1. Section 33 of The Localism Act 2011 enables a council, in certain circumstances, to grant dispensations to permit members to take part in the business of the council even if the member has a Disclosable Pecuniary Interest relating to that business. This issue is also dealt with in a paper published by the DCLG in August 2012 – *Openness and Transparency on Personal Interests – A Guide for Councillors*.

4.2. These circumstances are where the council considers that:

- (a) without the dispensation the number of persons prohibited from participating in any particular business would be so great a proportion of the council or committee etc transacting that business that it would impede the transaction of that business,
- (b) without the dispensation the representation of different political groups on the council or committee etc transacting that business would be so upset as to alter the likely outcome of any vote relating to the business,
- (c) the granting of the dispensation is in the interests of people living in the council's area,
- (d) without the dispensation each member of the council's executive would be prohibited from participating in any particular business to be transacted by the council's executive, or
- (e) it is otherwise appropriate to grant a dispensation.

4.3. A dispensation must specify the period for which it has effect, and the period specified may not exceed four years.

4.4. The previous standards regime recognised that, in certain circumstances, and notwithstanding the fact that a member had a prejudicial interest in the business being transacted at the meeting, there should be some absolute exemptions for members so that they could take part in the democratic process.

4.5. These absolute exemptions related to the decisions of councils in respect of:

- (a) Housing – where a member was a tenant of a council provided that the decision did not relate particularly to his tenancy or lease.
- (b) School meals or school transport and travelling expenses – where a member is a parent or guardian of a child in full time education, or where a member is a parent governor of a school, unless the decision relates particularly to the school which his child attends.
- (c) An allowance, payment or indemnity given to members.
- (d) Any ceremonial honour given to members.
- (e) Setting council tax under the Local Government Finance Act 1992.

4.6. The Code of Member Conduct does not set out any exemptions and section 33 of the Localism Act 2011, which deals with Disclosable Pecuniary Interests only, anticipates that applications from members for a dispensation should be dealt with by councils on a case by case basis. This approach appears both unwieldy and inefficient and there is the potential for many members to be disenfranchised, for example when the council is making major decisions such as setting the council tax.

4.7. Without a dispensation members would be prevented from taking part in important issues relating to the council and it is in the interests of people living in Essex that members are able to play a full part in the decision making on key issues. It is recommended that the Committee grant a dispensation to all members in respect of the matters set out in the recommendations. This covers both Disclosable Pecuniary Interests and Other Pecuniary Interests.

4.8. It is recommended that the period for which these dispensations shall have effect is until the next ordinary election of the council on 2 May 2013. The matter will be reported to the committee again after that time with a request for a 4 year dispensation to coincide with the next full election in 4 years time.

5. Relevance to Essex County Council's Corporate Plan and other Strategic Plans

The proposals set out in this paper are consistent with the Council's Code of Governance, the Leader and Chief Executive's Governance Statement and the Council's Annual Governance Statement for 2011/12 .

6. Legal Implications

Section 33 of The Localism Act enables the Council to grant dispensations, for a time limited period of not more than four years, in respect of Disclosable Pecuniary Interests for the circumstances set out in the section. The Council has delegated the power to grant dispensations to the Committee.

7. Finance and Resources Implications

There are no financial implications arising from this report.

8. Human Resources Implications

There are no HR implications arising from this report.

9. Equality Impact Assessment

There are no specific implications for inclusion, diversity or community cohesion within the context of this report Code of conduct prohibits members from doing anything that would breach the equality enactments.

10. Background Papers

DCLG August 2012 – *Openness and Transparency on Personal Interests – A Guide for Councillors*.