

Report to Joint Standards Committee	SC/01/16
Date of meeting: 14 March 2016	County Divisions affected by the decision: All Divisions
Title of report: Dispensations for County Councillors who are also District Councillors or Members of the Essex Fire Authority	
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1. Purpose of report

- 1.1 To consider applications for a dispensation from members of the County Council as a result of membership of a district council or the Essex Fire Authority.
- 1.2 This uses the term 'twin hatted' to refer to Councillors who are also members of other authorities.

2. Recommendations

- 2.1 Grant a dispensation to County Councillors named in the appendix to this report (other than those who are present at the meeting) which allows them to participate in decision making and scrutiny at Essex County Council notwithstanding the fact that they or their spouse or partner is a member of a district council or the Essex Fire Authority other than as set out in paragraph 2.2.
- 2.2 The Dispensation does not apply to:
 - (a) the consideration of any approval, consent, licence, permission or registration in relation to that authority; or
 - (b) the award of a contract to that authority following a competitive procurement.
- 2.3 Agree that the dispensation should last for a period of 4 years.

- 2.4 Agree that the Monitoring Officer and Deputy Monitoring Officer each be authorised to grant dispensations to members in similar terms.

3. Background and proposal

- 3.1 Local authorities have always had rules to manage potential conflicts between the private interests of a councillor and their public duties. The rules change regularly but they always seek to prevent councillors from acting as a councillor where this conflicts with their public role. It has always been accepted that there are some limited circumstances where councillors should be able to participate and even vote notwithstanding the fact that they could be perceived as having a conflict.
- 3.2 At present Members are required not to participate in meetings and must leave the room if they have a disclosable pecuniary interest. Failure to declare a pecuniary interest is a criminal offence which can be prosecuted by the Crown Prosecution Service.
- 3.3 Unlike the previous code of conduct, the law of pecuniary interests does not provide for automatic exemptions. Instead, the Council is empowered to grant dispensations in certain circumstances. Essex County Council has delegated the power to grant dispensations to the Joint Standards Committee.
- 3.4 The law about dispensations is contained in section 33 of the Localism Act 2011. It says that the Council may, on a written request made to the proper officer of the authority by a member or co-opted member of the authority, grant a dispensation.
- 3.5 The Council can only grant a dispensation if, after having had regard to all relevant circumstances, it—
- (a) Considers that without the dispensation the number of persons prohibited by 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.

This criterion would apply where it would be difficult to take the decision because of the number of councillors affected by the particular interest.

- (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.

This would apply where a number of members of a particular political group have a conflict.

- (c) Considers that granting the dispensation is in the interests of persons living in the authority's area.

This is a very broad exemption which allows dispensations to be granted in the interest of Essex residents generally.

- (d) If it is an authority operating executive arrangements, the Council considers that 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

This has limited application and would apply only where a conflict of interests particularly affected members of the Executive.

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

As with (c) above, this is a provision giving the council a broad discretion which authorises the grant of dispensations in a very wide range of circumstances.

3.6 Any dispensation must say:

- (a) How long it lasts. A dispensation cannot last for longer than four years.
- (b) What it covers (eg which interest it relates to and whether it applies in all circumstances or only some of the time)
- (c) Whether it covers
 - a. participation in discussion
 - b. voting; or
 - c. both

3.7 It should be noted that the power to grant a dispensation arises only where an application has been received.

Background to the application

3.8 Many of our councillors are also a member of one of the 12 district councils. In addition, 20 of the 75 councillors are also members of the Essex Fire Authority. Some councillors have spouses or partners who are district councillors. A list of those affected is at appendix 1. Under the old code of conduct they would have been able to speak and vote on all matters relating to the other authority.

3.9 When the Localism Act 2011 was introduced it was relatively clear that membership of a district council or the EFA was a registrable interest because members of those authorities receive payment in the form of an allowance. It is therefore an office carried on for gain. Some local authorities granted dispensations to twin hatted members, on the basis that this would preserve the position as it was under the former Code of Conduct.

- 3.10 Essex County Council did not take this approach. The current position is that if a member participates in a matter in which they have an interest as a result of their – or their spouse's - membership of another authority then they may commit an offence.
- 3.11 The Localism Act 2011 was not intended to put councillors in an uncertain position or to mean that their other public roles ought to give rise to the risk of committing offences, particularly in circumstances where the previous regime would allow them to participate fully.
- 3.12 Accordingly, in order to ensure that the position for twin hatted members is as clear as possible it is recommended that a dispensation is granted to all twin hatted members who require one. The aim of the dispensation is to ensure that members are clearly put in the same position as they would have been before 2012. It is clearly in the interests of Essex residents to do so.
- 3.13 After consultation, a letter was sent to all members of the County Council to inform them that an application would be made for this dispensation if they were a twin hatted member (or their spouse was a district councillor) unless they indicated that they did not require one. No member has indicated that they do not require a dispensation.
- 3.14 Since the dispensation would apply to some members of this Committee it is recommended that the dispensation is granted to those listed in appendix 1 who are not present at the meeting, and that authority is granted to the relevant officer to grant dispensations in other cases. Officers would then be able to grant a dispensation to members of the Committee and in future to councillors who are newly elected to district councils or appointed to the Fire Authority.

4. Financial Implications

- 4.1 There are no financial implications to the grant of dispensations which can be dealt with inside existing resources.

5. Legal Implications

- 5.1 The legal implications are set out elsewhere in this report.

6. Staffing and other resource implications

- 6.1 This report has no staffing implications.

7. Equality and Diversity implications

- 7.1 In making this decision the Council must have regard to the public sector equality duty under section 149 of the Equalities Act 2010. The Council is required to have due regard to the need to:
- (a) Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
 - (b) Advance equality of opportunity between people who share a protected characteristic and those who do not.

This includes having regard to the need to:
 - (i) remove or minimise disadvantages suffered by particular equality groups;
 - (ii) take steps to meet the needs of particular equality groups;
 - (iii) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
 - (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.
- 7.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 7.3 The equality duty is a relevant factor in making this decision but does not impose a duty to achieve the outcomes in section 149. This equality duty is only one factor that needs to be considered, and may be balanced against other relevant factors.
- 7.4 It is not anticipated that this decision will have any adverse impact on anyone; based on their race or culture, age, sexual orientation, impairment, gender, caring role, re-assigned gender, pregnancy/maternity/paternity, marital status or civil partnership, religion/belief or socio-economic and/or health inequalities.

8. List of background papers

Letter to all Councillors, February 2016

List of ECC members where the member or their spouse or partner is also a District Councillor.
Where the 'District Ward' box is shaded, the Member has a spouse or partner who is a member of the District Council.

Name		District	ECC Division	District Ward
Basildon				
Ellis	Mark	Basildon	<i>Laindon Park & Fryerns</i>	Laindon Park
Hedley	Tony	Basildon	Billericay & Burstead	Billericay West
McGeorge	Melissa	Basildon	<i>Pitsea</i>	Vange
Smith	Kerry	Basildon	Westley Heights	Nethermayne
Braintree				
Abbott	James	Braintree	Witham Northern	Silver End and Cressing
Butland	Graham	Braintree	Braintree Town	Gt Notley & Black Notley
Canning	Stephen	Braintree	Bocking	Bocking Blackwater
Newton	Patricia	Braintree	Braintree Eastern	Coggeshall
Brentwood				
Aspinell	Barry	Brentwood	Brentwood North	Pilgrims Hatch
Hirst	Roger	Brentwood	Brentwood Hutton	Hutton South
Kendall	David	Brentwood	Brentwood South	Pilgrims Hatch
Castle Point				
Bayley	Alan	Castle Point	South Benfleet	Appleton
Blackwell	Dave	Castle Point	Canvey Island East	Canvey Island Central
Howard	Ray	Castle Point	Canvey Island West	Canvey Island West
Chelmsford				
Chandler	Jenny	Chelmsford	Great Baddow	Great Baddow West
Deakin	Jude	Chelmsford	Chelmsford West	Marconi
Grundy	Ian	Chelmsford	Stock	South Hanningfield, Stock and Margareting
Madden	Richard	Chelmsford	Chelmsford Central	Moulsham and Central
Robinson	Stephen	Chelmsford	Chelmsford North	Patching Hall
Spence	John	Chelmsford	Chelmer	Yvonne Spence Marconi
Colchester				
Bentley	Kevin	Colchester	Stanway & Pyefleet	Birch and Winstree
Brown	Anne	Colchester	Constable	Dedham and Langham
Harris	Dave	Colchester	Maypole	Berechurch
Higgins	Theresa	Colchester	Parsons Heath & East Gates	New Town
Jowers	John	Colchester	Mersea & Tiptree	West Mersea
Lissimore	Sue	Colchester	Drury	Prettygate
Young	Julie	Colchester	Wivenhoe St. Andrew	St. Andrews Spouse: Tim Young St Andrews
Epping Forest				
Gadsby	Ricki	Epping Forest	Waltham Abbey	Waltham Abbey South West
Knapman	John	Epping Forest	Chigwell & Loughton Broadway	Chigwell Village
McEwen	Maggie	Epping Forest	Ongar & Rural	High Ongar, Willingale and the Rodings
Pond	Chris	Epping Forest	Loughton Central	Loughton Broadway Spouse: Caroline Pond Loughton St John's

Name		District	ECC Division	District Ward
Whitehouse	Jon	Epping Forest	Epping & Theydon Bois	Epping Hemnal
Harlow				
Clempner	Karen	Harlow	Harlow West	Toddbrook Spouse: Jon Clempner (Leader) Lt Parndon & Hare St
Danvers	Michael	Harlow	Harlow North	Netteswell
Durcan	Tony	Harlow	Harlow West	Little Parndon and Hare Street
Johnson	Eddie	Harlow	Harlow South East	Great Parndon
Maldon				
Boyce	Bob	Maldon	Southminster	Althorne
Channer	Penny	Maldon	Maldon	Mayland
Rochford				
Cutmore	Terry	Rochford	Rochford North	Ashingdon and Canewdon
Hoy	Michael	Rochford	Rochford West	Hullbridge Spouse: Diane Hoy Hullbridge
Maddocks	Malcolm	Rochford	Rayleigh North	Hockley West
Seagers	Colin	Rochford	Rochford South	Foulness and Great Wakering
Tendring				
Guglielmi	Carlo	Tendring	Tendring Rural West	Manningtree, Mistley, Lt Bentley & Tendring Souse: Valerie Guglielmi Lawford
Henderson	Ivan	Tendring	Harwich	Harwich East
Honeywood	Paul	Tendring	Clacton West	Pier
Uttlesford				
Barker	Susan	Uttlesford	Dunmow	High Easter Spouse: Graham Barker Gt Dunmow South and Barnston
Lodge	John	Uttlesford	Saffron Walden	Saffron Walden Shire

ECC members appointed to the Essex Fire Authority:

Essex County Council

Councillor B Aspinell (Lib Dem)
Councillor S Barker (Con)

Councillor J Chandler (Con)
Councillor A Erskine (UKIP)
Councillor A M Hedley (Con)
Councillor P Honeywood (Con)
Councillor J Jowers (Con)
Councillor M McEwen (Con)
Councillor Lady P Newton (Con)
Councillor A Turrell (Lib Dem)

Councillor A Bayley (UKIP)
Councillor D Blackwell (Non-aligned)
Councillor M Danvers (Con)
Councillor C Guglielmi (Con)
Councillor I Henderson (Lab)
Councillor M Hoy (Green)
Councillor J Knapman (Con)
Councillor A Naylor (Con)
Councillor C Seagers (Con)
Councillor A Wood (Con)