

# HAMPSHIRE COUNTY COUNCIL

## Decision Report

<b>Decision Maker:</b>	Conduct Advisory Panel
<b>Date:</b>	23 June 2017
<b>Title:</b>	Disclosable Pecuniary Interests - Dispensations
<b>Report From:</b>	Director of Transformation & Governance

**Contact name:** Barbara Beardwell, Head of Law & Governance, and Monitoring Officer

**Tel:** 01962 845330

**Email:** [barbara.beardwell@hants.gov.uk](mailto:barbara.beardwell@hants.gov.uk)

### 1. Executive Summary

1.1. The purpose of this report is to seek renewal of a number of dispensations granted by the Conduct Advisory Panel under Section 33 of the Localism Act 2011 ('Localism Act') in respect of participation and voting in Meetings in cases where Members or Co-opted Members of the County Council have a Disclosable Pecuniary Interest ('DPI').

### 2. Contextual information

2.1. Part 7 of the Localism Act, Sections 26-37 introduced revised arrangements in respect of the Members' Code of Conduct, and the registration and disclosure of Members' Interests.

2.2. Section 31 (4) of the Localism Act provides that where a Member or Co-opted Member of the County Council has a DPI in a matter under consideration at a Meeting such Member may not:

- a) Participate, or participate further, in any discussion of the matter at the meeting, or
- b) participate in any vote, or further vote, taken on the matter at the Meeting.

By virtue of Section 31(5) to 31(8) of the Localism Act such provisions are extended to meetings and decisions made by the Executive pursuant to Executive Arrangements.

2.3. Section 33 of the Localism Act provides that the County Council may grant a dispensation from either or both of the restrictions set out in the Localism Act referred to at Paragraph 2.2 above of this report. This function was delegated to the Conduct Advisory Panel by the County Council at its meeting on 17 May 2012. Subsequent to this date the function of dealing with minor or routine dispensations was delegated by the Conduct Advisory Panel at its

meeting on 20 October 2014 to a Sub-Committee of the Panel. Significant applications, e.g. those affecting all Members are dealt with by the Panel.

- 2.4. The Conduct Advisory Panel may grant a dispensation under Section 33 of the Localism Act if, having regard to all the circumstances, it considers that:
- a) without the dispensation the number of Members participating in any particular business would be so great a proportion of the body transacting the business so as to impede transaction of the business; or
  - 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; or
  - c) that granting the dispensation is in the interests of persons living in the County Council's area; or
  - d) that without the dispensation each Member of the Executive would be prohibited from participating in any Executive business; or
  - e) that it is otherwise appropriate to grant a dispensation.

A dispensation granted under this Section must specify the period for which it has effect, not exceeding four years.

### **3. Existing Dispensations Granted by the Conduct Advisory Panel**

#### **General Dispensations – expiring 31 July 2017**

- 3.1. Included within the list of DPI's which Members are required to register is any beneficial interest of the Member, his/her husband or wife/civil partner or person with whom they are living as such, within the administrative area of the County Council. It is considered that this provision could apply to all Members of the County Council.
- 3.2. It is considered that if a dispensation were not granted then any Member with a beneficial interest in land within the administrative area of Hampshire County Council would be prevented from taking part in business relating to the setting of Council Tax and Precepts. Clearly, the proportion of Members with the DPI would be so great a proportion of any body of Members considering such matter so as to impede the transaction of the business. For this reason a general dispensation has been granted.
- 3.3. Similarly Members are required to disclose as a 'DPI' any 'employment, office, trade, profession or vocation carried on for profit or gain'. In this regard the view of the Monitoring Officer is that whilst Members hold public office, such office is not carried out for profit or gain for the purposes of the DPI regulations, the receipt of an allowance being compensatory (relating to time spent and expenses incurred) and therefore not 'carried out for profit or gain'. On this basis the fact that a Member of Co-opted Member of the County Council is in receipt of an allowance under the County Council's Members' Allowances Scheme, or the Members' Allowances Scheme of another relevant authority, would not constitute a DPI and therefore would not prevent

a Member from participating in the business of the County Council. This advice is supported by leading Counsel's opinion.

- 3.4. It is however recognised that there is no judicial interpretation of this point, and Members have therefore considered that, notwithstanding the view of the Monitoring Officer and leading Counsel that the receipt of an allowance under the Members allowances scheme does not constitute a DPI, a dispensation should be granted 'for the avoidance of doubt', so that there is no question that Members and Co-opted Members of the County Council in receipt of an allowance may not participate or vote on County Council business.

### **Dispensation – Officer Members Health and Wellbeing Board – Expiring 31 July 2017**

- 3.5. Whilst being a Committee of the County Council, the Health and Wellbeing board is unique in that it has Officers of the County Council who are Co-opted members of the board with full voting rights. As such, they are bound by the County Council's Members' Code of Conduct which prohibits those with a DPI (which as employees of the County Council they would have), from participating or voting in any business relating to Hampshire County Council. For this reason a dispensation has been granted in order to allow Officer Members to participate and vote on the work of the Health and Wellbeing Board.

### **Specific dispensation – Member of River Hamble Harbour Board – expiring 31 July 2017**

- 3.6. The County Council discharges its duties as the Harbour Authority for the River Hamble through the River Hamble Harbour Board which includes Co-opted Members who represent various interests on the river. Co-opted Members of the Board are selected on the basis that they have relevant experience in recreational sailing, the marine industry and environmental management. Mr Moody is one of the Co-opted Members and has declared that he receives a small annual honorarium from the Hamble River Boat Yard and Marina Operators Association for carrying out their secretarial duties. Interests such as this are likely to arise from time to time given the experience required for appointment as a co-opted Member of the Board.

This annual honorarium is however a DPI, and without a dispensation would have the effect of preventing Mr Moody's participation in a number of items of business which are considered by the Board. A dispensation has therefore been granted to enable Mr Moody to participate in the business of the Board when dealing with matters which would affect Hamble River Boat Yard and Marina Operators Association. Mr Moody has recently been reappointed to the River Hamble Harbour Board and has requested that his dispensation be extended.

## **4. Future Direction**

- 4.1. As Members will note, existing dispensations granted by the Conduct Advisory Panel expire on 31 July 2017. The reason for this is when last

considered by the Conduct Advisory Panel, it was thought sensible in the interest of efficiency to align the expiry date of dispensations. Since a dispensation may be granted for up to four years, this is best done in accordance with the County Council's four year electoral cycle.

- 4.2. It is therefore suggested that all existing dispensations referred to in this report be extended to 31 July 2021. This would enable a meeting of the Conduct Advisory Panel to be convened following the County Council elections in May 2021 and appointment of any Co-opted Members, to consider any general dispensations which might be required, and any specific dispensations arising out of individual Member or Co-opted Member circumstances. Should any further 'ad hoc' dispensations be required, these could be granted by a Sub-Committee of Members of the Conduct Advisory Panel in accordance with existing arrangements approved by the Panel.
- 4.3. In addition a query has been raised about the status of moorings on the River Hamble and whether or not being a mooring holder constitutes a Disclosable Pecuniary Interest. As it can be argued that a mooring is an interest in land and it is possible that a number of Members are mooring holders it is considered appropriate to grant a general exemption for any Members who are mooring holders to participate and vote in County Council business relating to the River Hamble.

## **5. Recommendations**

- 5.1. It is recommended that the Conduct Advisory Panel grant the following dispensations:
  - a) A dispensation under Sections 33(2)(a) and (d) of the Localism Act expiring on 31 July 2021 to all Members of the County Council from the provisions of Sections 31(4)(a) and (b) of the Localism Act enabling all Members of the County Council to participate and vote in any business of the County Council relating to the setting of the Council Tax or Precepts, when they would otherwise be prevented from doing so in consequence of a beneficial interest in land within the administrative area of Hampshire.
  - b) A dispensation under Sections 32(2)(a) and (d) of the Localism Act expiring on 31 July 2021 to all Members and Co-opted Members of the County Council in receipt of an allowance under the Hampshire County Council Members' Allowances Scheme or Members' Allowances Scheme of another relevant Authority from the provisions of Sections 31(4)(a) and (b) of the Localism Act enabling all Members and Co-opted Members of the County Council to participate and vote in any business of the County Council where they may otherwise be prevented from doing so in consequence of being in receipt of a Members' Allowance.
  - c) A dispensation under Section 33(2)(e) of the Localism Act expiring on 31 July 2021 to all Officer Members of the Health and Wellbeing Board for Hampshire from the provisions of Sections 31(4)(a) and (b) of the Localism Act enabling

them to fully participate and vote in any business of the Health and Wellbeing Board for Hampshire when they would otherwise be prevented from doing so by virtue of a DPI deriving from their employment by the County Council.

- d) A dispensation under Section 33(2)(c) of the Localism Act expiring on 31 July 2021 to Mr Moody enabling him to fully participate and vote in any business of the River Hamble Harbour Board when he would otherwise be prevented from doing so by virtue of a Disclosable Pecuniary Interest arising from the honorarium he receives from the Hamble River Boatyard and Marina Operators Association.
- e) A dispensation under Section 33(2) (a) and (c) of the Localism Act expiring on 31 July 2021 to all Members of the River Hamble Harbour Board and the River Hamble Management Committee enabling them to fully participate and vote in any business of the River Hamble Harbour Board and River Hamble Management Committee when they would otherwise be prevented from doing so by virtue of a Disclosable Pecuniary Interest arising from holding a mooring on the River Hamble.

**CORPORATE OR LEGAL INFORMATION:****Links to the Corporate Strategy**

**This proposal does not link to the Corporate Strategy but, nevertheless, requires a decision because of the requirements of the Localism Act 2011, and for the good governance of the County Council.**

**Other Significant Links**

<b>Links to previous Member decisions:</b>		
<u>Title</u>	<u>Date</u>	
Disclosable Pecuniary Interests – General Dispensation	30 October 2012	
Disclosable Pecuniary Interests – Dispensation for Officer Member of the Health and Wellbeing Board for Hampshire	2 October 2013	
Disclosable Pecuniary Interests – Dispensation for Member of the River Hamble Harbour Board	20 October 2014	
Arrangements for the Granting of Dispensations	20 October 2014	
Disclosable Pecuniary Interests – Dispensations	22 June 2016	
<b>Direct links to specific legislation or Government Directives</b>		
<u>Title</u>	<u>Date</u>	
Localism Act	2011	
Relevant Authorities (Disclosable Pecuniary Interests) Regulations	2012	

**Section 100 D - Local Government Act 1972 - background documents**

**The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)**

<u>Document</u>	<u>Location</u>
None	

## **IMPACT ASSESSMENTS:**

### **1. Equality Duty**

1.1. The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

**Due regard in this context involves having due regard in particular to:**

- a) The need to remove or minimise disadvantages suffered by persons sharing a relevant characteristic connected to that characteristic;
- b) Take steps to meet the needs of persons sharing a relevant protected characteristic different from the needs of persons who do not share it;
- c) Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity which participation by such persons is disproportionately low.

#### **1.2. Equalities Impact Assessment:**

Equality objectives are not considered to be adversely affected by the proposals within this report.

### **2. Impact on Crime and Disorder:**

Not applicable.

### **3. Climate Change:**

- a) How does what is being proposed impact on our carbon footprint / energy consumption?

Not applicable.

- b) How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts?

Not applicable.