

ADVICE TO TOWN AND PARISH COUNCILS ON HANDLING REQUESTS FOR DISPENSATIONS AT A MEETING

Please note this advice is based on the NALC Model Code of Conduct. Where councils have adopted another Code, different procedures may be necessary as their Code may contain different interest provisions, although the procedures relating to Disclosable Pecuniary Interests (DPIs) would apply to all councils as these are statutory interests.

THE RULES ON DECLARATIONS OF INTEREST

DPIs

Where a councillor has a Disclosable Pecuniary Interest in any item of business, they cannot take part in that item of business but must withdraw from the meeting when that agenda item arises.

Best practice would be that they withdraw from the room rather than simply sit to one side, to avoid any inference that they might be seeking to influence discussion. However, that is a matter for each council's standing orders.

The councillor can participate if they have been granted a dispensation. Councillors must ask for a dispensation in writing to the clerk. Dispensations can be granted in advance of the meeting or agreed at the start of the meeting. It is up to each parish council to decide whether they wish to delegate the granting of dispensations to the clerk or whether they wish to reserve the right to the relevant meeting itself.

Even where it is delegated to the clerk, there may be times when the need for a dispensation comes to light at the meeting itself. Councils should therefore have an agenda item at the start of each meeting to deal with declarations of interest and any dispensations.

The council should then consider each application on its merits and whether the dispensation is simply to speak about the item before withdrawing or to be able to speak and vote.

Dispensations can be granted because the meeting would otherwise be inquorate if councillors were unable to take part; or can be granted because the council believes it is in the public interest to allow the councillor to participate.

Each application must be considered on its merits – so, for example, you couldn't give a blanket dispensation to say 'all councillors with DPIs will always be allowed to speak about an item before withdrawing'. However, a dispensation may be granted for a single meeting, or for all meetings relating to a particular item, or for a particular period of time.

If the dispensation has been agreed to run for more than one meeting, the agenda for each subsequent meeting should note whenever the relevant item is on the agenda that Cllr x was granted a dispensation by the council on [d] to [participate] despite having a disclosable pecuniary interest.

Examples of a disclosable pecuniary interest

DPIs only cover a narrow category of interests. It must be something which should be included on Part A of your register and the matter under discussion must be about that specific interest. For example, if you have property in the area and there is a planning application for that property you would have a DPI and could not therefore speak to support the application without a dispensation.

OTHER INTERESTS

Where you have adopted the NALC Code of Conduct, there is a requirement to register and declare other interests. These include interests relating to Part B of the register (for example, membership of outside bodies) or interests which, although they do not relate to the councillor's interest directly may affect the councillor, or the interests of their friends or close family.

Examples would include an application for funding by an outside body of which the councillor is a member; a planning application on a property adjacent to the councillor's home, which would therefore affect their property in some way; or an application made by somebody such as a friend or sibling of the councillor.

Where you have adopted a Code other than the NALC Code these types of interests may or may not be covered. If in doubt you should ask your monitoring officer or county secretary for advice.

Under the NALC Code, where a councillor has one of these interests they are not allowed to vote on the matter and can only speak on the matter if the public are also allowed to speak about the matter. For example, if it is a neighbour's planning application the councillor would be allowed to speak for or against the application if it was in open session and the public were given the chance to speak.

Councillors who have these interests and believe they should be allowed to vote on the matter, or speak in private session, would therefore also need a dispensation and similar procedures to those for DPIs should be followed for granting a dispensation.

SOME PROCEDURAL ISSUES

Where a meeting is considering dispensations, this should be a standing agenda item at the meeting, together with a requirement for any relevant declarations of interest.

A model agenda item may be

Declarations of interest and dispensations

- a) To receive declarations of interest from councillors on items on the agenda**
- b) To receive written requests for dispensations for declarable interests (if any); and**
- c) To grant any requests for dispensation as appropriate**

Where the council has delegated the decision on whether to grant a dispensation to the clerk, the clerk should list on the agenda any dispensations which have been granted in advance or where there are standing dispensations and the agenda item above modified to say b) to note dispensations granted and receive any further requests for dispensations.

Where a written request for a dispensation has been made, the clerk should circulate these requests with the rest of the papers for the meeting where possible. If this is not possible, copies should be made available to members at the start of the meeting. This would give the members appropriate time to consider whether the request for a dispensation is justified or not. A standard form that can be used is attached as Appendix A to this note.

It is therefore good practice for councillors to submit dispensation requests as soon as they are aware that they may require one. Applications may also exceptionally be made at the parish council meeting itself where the member has only just become aware of the need to request one. In that case, the councillor should state the reasons why a dispensation is necessary and what conditions they wish to apply to the dispensation, along the lines of the model form attached and these reasons should be appropriately minuted. By law, requests for dispensations have to be made in writing. Where a councillor only becomes aware of the need for a dispensation at the start of the meeting or relevant agenda item, they should state their need for a dispensation with reasons and the clerk should request them to fill in a dispensations request form as soon as practicably possible so that a formal record of a written request can be kept.

APPLICATION FOR A DISPENSATION

This is a generic form which can be used for applications for dispensations by members.

The requirement for dispensations will vary from authority to authority depending on the content of the local Code of Conduct. This form has therefore been designed to be adapted according to local circumstances. It should be read in conjunction with these notes before being adapted for your own authority's use.

Note 1 – this sentence need only be used where councils have contained additional categories of interests in their local code which exclude a councillor from speaking and/or voting on a specific matter.

Note 2 – if your council has delegated the power to grant a dispensation, for example to a committee or to the clerk, a sentence explaining that should be added here.

Note 3 – this field is only necessary if you have more than one category of interest. If your only category is the disclosable pecuniary interests as set out under the Localism Act you can delete this field.

Note 4 – this field is where the councillor would set out the nature of interest, either as contained in the register of interest or otherwise. For example 'decision affects my employer' or 'relates to a property owned by my brother'. An exhaustive list cannot be given as it depends on exact wording of your local code.

Note 5 – this is where a councillor specifies what they want the dispensation for. This may be a specific one-off piece of business e.g. to discuss planning application by the village shop; or a general policy issue; or to deal with anything which might arise on a particular subject e.g. all business relating to the local conservation group.

Note 6 – councils can grant a dispensation if the meeting would otherwise not be quorate. They can also more generally grant dispensations if they believe it is in the public interest to do so. In such cases, councillors should give a specific reason. Examples may include things such as 'to make representations on behalf of x organisation' or 'to explain in a personal capacity matters the council needs to consider before deliberating'. It should be borne in mind when considering whether the dispensation should be granted, councillors should not be allowed to have greater advantage than ordinary members of the public on matters which would impact upon them or their associates financially. Caution therefore needs to be exercised to ensure there is no specific advantage being conveyed.

Note 7 – for the councillor to sign so it is a written request for dispensation as required by the law.

Note 8 – to be deleted according to your delegation rules. Reasons should be given for acceptance/refusal. Where it is accepted, it may simply say 'for reasons set out above'; where refused you should give clear reasons.

Note 9 – to be signed by the chair or clerk depending on scheme of delegation.

APPLICATION FOR A DISPENSATION FOR MEMBERS OF [x] COUNCIL

Under the Localism Act 2011, councillors cannot participate in meetings where they have a disclosable pecuniary interest.

These provisions have been included in [x] Council's Code of Conduct.

In addition to the disclosable pecuniary interests mandatory under the Localism Act 2011, [x] Council has included some other categories of interest in its Code of Conduct. (see Note 1)

Under certain circumstances, councillors are allowed to apply for a dispensation to speak and/or vote at a meeting where matters relating to their interest are being discussed. Such applications must be put in writing by the member, submitted to the proper officer and agreed by the council. (see Note 2)

In order to ensure a consistent approach by [x] Council councillors are asked to put their requests for a dispensation on this form.

Name of councillor:

Type of interest: (see Note 3)

Business under discussion: (see Note 5)

Type of dispensation required: tick box as appropriate

To speak and vote

To address the meeting before withdrawing

Length of time dispensation required for: tick box as appropriate

One meeting only (if so, please specify which one)

.....
For all discussions on a subject (please specify)

.....
For one year

Until next election

Reason for requesting dispensation: (see Note 6)

.....

Signed (see Note 7)

Date

Approval / Refusal (see Note 8)

This dispensation was considered by [x] Council at its meeting on [dd/mm/yy]/considered by the clerk/committee under delegated authority and was approved/declined (delete as appropriate)

Reason for approval / refusal

Signed (see Note 9)

Date