

## **Proposed dispensation to all members to enable them to participate and vote at the Council budget setting meeting(s)**

Lead Member: Cllr John Bailey, Chair of the Committee

Lead Officer: Scott Wooldridge, Monitoring Officer

Contact Details: tel (01823) 357628 or e-mail: [scott.wooldridge@somerset.gov.uk](mailto:scott.wooldridge@somerset.gov.uk)

### **1. Summary**

- 1.1. The Committee is being asked to grant dispensations to all members to enable them to fully participate in the Council's budget meetings in February and March 2023.

### **2. Recommendations**

- 2.1 That all Councillors are granted a dispensation to enable them to participate in any discussions and to participate in the vote in all council meetings where they have a disclosable pecuniary interest where members are considering and agreeing the setting of the Council's Annual Budget, Council Tax, precepts, Housing Revenue Account budget and business plan related decisions and the Members Allowances Scheme.
- 2.2 That the Committee delegates authority to the Monitoring Officer to grant dispensations in the future.

### **3. Complaints received and investigated**

- 3.1. In accordance with the Localism Act 2011 and the Council's Constitution, Council members are not permitted to speak or vote on any matter being dealt with at a meeting when they have a disclosable pecuniary interest, and are required to leave the room when the matter is being discussed. Members, their spouses or partners owning or renting a property in Somerset and paying Council tax may have a disclosable pecuniary interest in any decision to agree the budget including the Council tax precept. Under the previous statutory code of conduct, decisions regarding setting the Council tax precept were excluded from the scope of the regime, but no similar provisions were made under the Localism Act 2011
- 3.2. Given the importance of all members being able to fully participate in the meeting dealing with the Council budget, the Committee is asked to grant dispensations to members who would otherwise not be able to take part as a result of these particular disclosable pecuniary interests. There are a number of statutory and locally agreed criteria that can be applied when granting a dispensation. The Monitoring Officer considers that one of the statutory criteria is particularly pertinent here, namely that the granting of the dispensation to all members is in the interests of people living in the Council's area. Alternatively the Committee can in any event exercise its own discretion to consider that it would be otherwise appropriate to grant a dispensation.
- 3.3. In order to protect Members it is recommended that a General Dispensation is granted to all Members to be present, speak and vote where they would

otherwise have a Disclosable Pecuniary Interest on the grounds that it is appropriate to grant a dispensation to allow all Members to participate fully in the following matters:

- Housing: where the Councillor (or spouse or partner) holds a tenancy or lease with the Council as long as the matter does not relate to the Councillor's particular tenancy or lease;
- Housing Benefit: where the Councillor (or spouse or partner) directly receives housing benefit in relation to their own circumstances;
- Members Allowances: An allowance, travelling expense, payment or indemnity for Councillors;
- Council Tax: Setting the Council Tax or a Precept; and 2.4.5 Decisions in relation to Council Tax Benefit.

- 3.4.** Members' allowances are included in this general dispensation for the avoidance of doubt and for completeness even though they are not a Disclosable Pecuniary Interest.
- 3.5.** Ordinarily an application for a dispensation is made individually by a member on written request to the Monitoring Officer, and the matter is then put to the Committee to determine. However, given that this potentially affects significant numbers of members, the Monitoring Officer is recommending that the Committee agrees a general dispensation for all councillors for the Council's budget setting meetings in February and March 2023.
- 3.6.** It is fair to say that there have been different interpretations of these provisions in different authorities, but given that a breach of these requirements would potentially be a criminal offence and as there is a process available to avoid any doubt, the monitoring officer has preferred to advise that the issue is managed in this way
- 3.7.** Dispensations can be made for one meeting, specific meetings or on an ongoing basis for up to four years. It is recommended that this dispensation applies to the matters set out in 3.3 above for consideration at the Scrutiny, Executive and Council budget meetings in February and March 2023.
- 3.8.** It is important to highlight that the proposed general dispensations for Council Tax relate to Members' disclosable pecuniary interests, and do not affect a Member's obligation under Section 106 of the Local Government Finance Act 1992 to declare and not vote if they are two months or more in arrears with their Council Tax when voting on setting the Council's budget. This section applies to any Member that has an amount of Council Tax due to be paid which has been unpaid for at least two months. If the member present at the meeting of the authority, a committee or the Executive at which Council Tax calculations or any decision which would affect the Council Tax calculations is under discussion, the Member shall, as soon as practicable after the commencement of the meeting, disclose the fact that Section 106 applies to them and shall not vote on any question in relation to these matters.

If the Member fails to comply with this requirement they may be prosecuted and, if convicted, be liable to a fine unless they can prove that they did not know that either this section applied to them at the time of the meeting or that the matter in question was the subject of consideration at the meeting.

## **4. Implications**

- 4.1.** The Localism Act 2011 and the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 introduced Disclosable Pecuniary Interests and rules on dispensations as part of the conduct arrangements.

It is a criminal offence for Members to fail to register a Disclosable Pecuniary Interest or to speak and/or vote where they have a Disclosable Pecuniary Interest unless they have obtained a dispensation.

Section 31(4) of the Localism Act provides that a member who has a disclosable pecuniary interest in any matter to be considered at a meeting may not participate in any discussion, or vote on the matter. However, by virtue of section 33, an authority may, on a written request by a member, grant a dispensation relieving the member from either or both of the restrictions in Section 31(4).

Section 33(2) provides that a dispensation may be granted where 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 persons living in the authority's areas, or
- (d) considers that it is otherwise appropriate to grant a dispensation.

Council has not specifically delegated to the Monitoring Officer the power to grant dispensations to Councillors or co-opted members in accordance with section 33 of the Localism Act 2011.

These proposals do not adversely compromise the Council's public sector equalities duty under the 2010 Equality Act.

## **5. Conclusion**

- 5.1.** It is in the public interest for all members of the Council to be able to participate in the discussions and decision relating to the Council's budget. As a result of any property interest they or their spouse or partner hold in Somerset and the fact that they are Council tax payers as a result, some members may have a disclosable pecuniary interest which would preclude them from dealing with this matter. The law enables dispensations to be made for members on the basis that it is in the interests of people living in the authority's area. To ensure that all the residents of Somerset can be properly represented in this debate and decision, it is recommended that the dispensations are made as requested.

## **6. Background papers**

- 6.1.** Localism Act 2011  
Openness and Transparency on Personal Interests: A guide for Councillors:  
<http://www.communities.gov.uk/documents/localgovernment/pdf/2193362.pdf>

**Note:** For sight of individual background papers please contact the report author