

NORTH YORKSHIRE COUNCIL
STANDARDS AND GOVERNANCE COMMITTEE

15 September 2023

Dispensation Request from Councillor Duckett

1.0 PURPOSE OF REPORT

- 1.1 To present to the Committee, for determination, a request from Councillor Stephanie Duckett for a dispensation from the Standards and Governance Committee.

2.0 BACKGROUND

- 2.1 The Monitoring Officer was designated by the Council as Proper Officer to receive written requests by Members/voting Co-opted Members for a dispensation under section 33 Localism Act 2011 relieving them from either or both of the restrictions on participating in the discussion and vote on a matter where they have a disclosable pecuniary interest (DPI).
- 2.2 The power to grant dispensations to Members and voting Co-opted Members under the new ethical framework was delegated by the Council to this Committee, after consultation with the Independent Persons.
- 2.3 Power was also delegated to the Monitoring Officer to grant dispensations (after consultation with the Independent Persons) where the timescales are such that a Standards and Governance Committee meeting cannot be convened and where the Monitoring Officer has consulted every available Member of the Standards and Governance Committee, all of whom consent to the granting of the dispensation.

3.0 DISPENSATION PROCESS

- 3.1 Under the Localism Act 2011 and delegated power from the Council, where a written request has been made to the Monitoring Officer as Proper Officer, the Standards and Governance Committee has power to grant a dispensation to a Member from non-participation in relation to a disclosable pecuniary (and other) interests where the Committee concludes, after having had regard to all relevant circumstances, that:
- (a) 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) 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) granting the dispensation is in the interests of persons living in the authority's area;
 - (d) without the dispensation each Member of the Authority's Executive would be prohibited from participating in any particular business to be transacted by the Executive; or
 - (e) it is otherwise appropriate to grant a dispensation.

- 3.2 The Committee must decide whether the application fulfils any of the criteria set out in paragraph 3.1 and, if so, whether it is appropriate to grant the dispensation in the circumstances, after balancing the public interest in preventing a Member with an interest from taking part in Council business, against the public interest in the relevant constituents not being disenfranchised and their views being able to be put forward on the business in question.
- 3.3 If the Standards and Governance Committee is minded to grant a dispensation, it must consider the scope (for example whether the dispensation will allow the Member to speak, discuss and vote on the item or speak and discuss only) and the duration of it. Dispensations may be granted for a maximum period of 4 years.
- 3.4 Any dispensation granted will be recorded in writing.

4.0 DISPENSATION REQUEST BY COUNCILLOR DUCKETT

- 4.1 Councillor Duckett has emailed the Monitoring Officer to request a dispensation for 4 years from the Standards and Governance Committee, to enable her to speak, fully participate and vote on matters at council meetings regarding council housing. A copy of Councillor Duckett's application is attached at **Appendix 1** to this report. She believes the application would satisfy criteria (c) set out in paragraph 3.1 above, namely that the granting of the dispensation would be in the interests of persons living in the authority's area
- 4.2 Councillor Duckett states that she was a tenant of predecessor council Selby District Council for 47 years and is now a tenant of North Yorkshire Council. She is seeking a dispensation from the Committee to enable her to participate in meetings involving council housing tenants' rights and rents. She has informed the Monitoring Officer that she has previously received dispensations from her former authority in relation to this matter and has asked that the following statement in support of her application be put before the Committee:
- “When I was first elected in 1995 at Selby DC, an exemption was arranged and was rolled on every year.
I sat on committees covering housing and was even allowed to vote on rent setting.
I don't plan to sit on any such committee at NY, apart from work to wind up Selby Housing Trust where I'm a trustee appointed by NY. so don't think it will be a problem.
I just want to save having to declare at every full council that I'm a tenant.”
- 4.3 Councillor Duckett's home address is registered in her register of interests and is therefore a Disclosable Pecuniary Interest. If there is an item of business due to be considered at a meeting which **directly relates** to that interest, then Councillor Duckett would need to declare the existence and nature of her interest to the meeting, not participate in any discussion or vote on the matter and withdraw from the meeting room for that item unless she has a dispensation.
- 4.4 If the business doesn't directly relate to the interest (the tenanted property), but could more indirectly **affect** the Councillor's finances or wellbeing, then Councillor Duckett may have a Non-Registrable Interest in the agenda item. She would need to declare the existence and nature of her interest to the meeting, and consider whether the matter affects her financial interest/wellbeing more than it affects that of the majority of inhabitants of the division affected and, if so, whether a reasonable member of the public knowing all the facts would believe it would affect Councillor Duckett's view of the wider public interest:

- if yes, then Councillor Duckett may speak if the public can but must otherwise take no part in the discussion or vote and must leave the meeting room unless she has a dispensation;
- if no, the matter does not so affect financial interest/wellbeing, then she can speak and vote in the usual way after declaring the interest.

4.5 The LGA guidance on the code of conduct states:

Disclosable Pecuniary Interests

*... The Localism Act uses the phrase ... disclosable pecuniary interest **in any matter to be considered or being considered at the meeting** ...*

*This wording has led to some confusion as to what circumstances would lead to the need to declare a DPI. The Explanatory Notes to the Localism Act say that section 31 of the Act “requires a member of a relevant authority to disclose a disclosable pecuniary interest that they are aware of (apart from a sensitive interest), at a meeting or if acting alone, where any matter to be considered **relates to** their interest. ... It prohibits a member from participating in discussion or voting on any matter **relating to** their interest or, if acting alone, from taking any steps in relation to the matter (subject to any dispensations).” [our emphasis].*

*This means you have a Disclosable Pecuniary Interest (DPI) in a matter when the matter being discussed **directly relates** to your registered interest or that of your partner, rather than simply affecting it.*

For example, if you have registered 1 Acacia Avenue as your address, you would have a DPI if you put in a planning application for 1 Acacia Avenue, or if the whole of Acacia Avenue was being considered for a Resident Parking Zone.

*You would not have a DPI if 3 Acacia Avenue had put in a planning application as the matter does **not directly relate** to your registered interest. You may however have a non-registerable interest (see below) as the application may indirectly affect your property...*

Non-registerable interest

*... A **Non-registerable Interest** arises where the interest is that of yourself or your partner which is not a DPI or of a relative or close associate (see definition below).*

As a councillor you are not expected to have to register the interests of your relatives or close associates but under the Code you are expected to declare them as and when relevant business occurs which affects their finances or wellbeing. The Code says you should not participate in the relevant business in two circumstances:

- **a.** when a matter directly relates to that interest. Or
- **b.** when a matter affects that interest to a greater extent than it affects the majority of inhabitants and
 - a reasonable member of the public would thereby believe that your view of the public interest would be affected

For example, under a) if your son has submitted an application for a licence to open a bar, the matter directly relates to your relative. You must not take part in any discussion or vote on the matter.

For example, under b) there has been an application made to build several units of housing on a field adjacent to your business partner's home. It is not their application, but they will be more affected by the application than the majority of people so again you would be expected to declare the interest and withdraw.

Similarly, an application for the property next door to you does not directly relate to your property so it is not a DPI, but you would instead need to declare a Non-Registerable Interest.

In all of these cases you can speak on the matter before withdrawing but only where the public are also allowed to address the meeting. If the public are not allowed to address the meeting on that item, you would need if necessary, to get another councillor who did not have an NRI to make any relevant case or to represent the wider views of constituents.

As with DPIs you can be granted a dispensation (see below).

What is the difference between 'relates to' and 'affects'?

Something relates to your interest if it is directly about it. For example, the matter being discussed is an application about a particular property in which you or somebody associated with you or an outside body you have registered has a financial interest.

'Affects' means the matter is not directly about that interest but nevertheless the matter has clear implications for the interest – for example, it is a planning application for a neighbouring property which will result in it overshadowing your property. An interest can of course affect you, your family or close personal associates positively and negatively. So, if you or they have the potential to gain or lose from a matter under consideration, an interest would need to be declared in both situations.

4.6 Should the Committee be minded to consider granting a dispensation, the relevant grounds may be:

- (c) granting the dispensation is in the interests of persons living in the authority's area;
- (e) it is otherwise appropriate to grant a dispensation.

Even if a dispensation is granted by the Committee, the interest would still need to be declared by Councillor Duckett and she would need to state to the meeting that she is relying on a dispensation to participate.

4.7 The Committee is therefore requested to consider and determine the dispensation request from Councillor Duckett to enable her to speak, vote and be included in the quorum at council meetings when council housing matters are to be considered.

5.0 FINANCIAL IMPLICATIONS

5.1 There are no significant financial implications arising from this report.

6.0 LEGAL IMPLICATIONS

6.1 The legal implications are set out in the body of this report.

7.0 ENVIRONMENTAL/CLIMATE CHANGE IMPLICATIONS

7.1 There are no significant environmental/climate change implications arising from this report.

8.0 EQUALITIES IMPLICATIONS

8.1 There are no equalities implications arising from this report.

9.0 CONCLUSION

9.1 That the Committee determines the submitted application by Councillor Duckett for a dispensation.

10.0 RECOMMENDATIONS

10.1 That the Committee considers and determines the application for a dispensation by Councillor Duckett.

10.2 That, should the Committee be minded to grant the dispensation requested, the Committee determine the scope, grounds and duration of the dispensation.

BARRY KHAN

Assistant Chief Executive Legal and Democratic Services and Monitoring Officer

Background Papers:

- The Localism Act 2011

County Hall
NORTHALLERTON

31 August 2023