

COUNCILLOR CONDUCT COMMITTEE

18 APRIL 2018

REQUESTS FOR DISPENSATIONS

Report from/Author: Perry Holmes, Monitoring Officer

Summary

This report seeks dispensations for three Cabinet Members who are also Directors of Council Companies.

1. Budget and Policy Framework

- 1.1 Upholding high standards of conduct are a matter for the Councillor Conduct Committee.
- 1.2 The Councillor Conduct Committee's terms of reference allow for the granting of dispensations to Councillors to allow participation in debate and/or voting on any item in which they have a disclosable pecuniary interest or other significant interest.

2. Background

- 2.1 The Council's Code of Conduct includes provisions for the granting of dispensations. The decision whether to grant them on request is a matter for this Committee.
- 2.2 The relevant section reads:

Other Significant Interests (OSIs)

- 12.1 *You will have an OSI in a matter being considered at a Council meeting where your interest is closely aligned to the business of the Council agenda item and where the business affects the financial position or well being of the following to a greater extent than most inhabitants of the area affected by the decision:*
 - i) you;*
 - ii) a member of your family or friends or any person with whom you have a close association;*
 - iii) any person or body from whom you have accepted or received any gifts or hospitality as specified in Schedule Two;*

iv) any outside body or group specified in Schedule Two of which you are a member or in a position of general control or management (as relevant).

And *where a member of the public with knowledge of the relevant facts would reasonably think that your interest is so significant that it would be likely to prejudice your judgement of the public interest.*

13. Participation in Meetings or Decision Making when you have an Other Significant Interest (OSI)

13.1 *Unless a dispensation has been granted, if you are present at a meeting and you have an OSI as defined in paragraph 12 in a matter you must disclose the existence and nature of the interest at the start of the meeting, or when the interest becomes apparent.*

13.2 *If you have a sensitive interest, you need not disclose the nature of your interest but merely the fact that you have an OSI in the matter.*

13.3 *You must:*

- a) not take part in any discussion of the matter*
- b) not take part in any vote on the matter*
- c) leave the meeting room (including the public gallery).*

13.4 *Where you are discharging a function of the authority (acting alone) and you have an OSI in any matter to be dealt with or being dealt with by you in the course of discharging that function you must not take any steps or further steps, in relation to the matter (except for the purpose of enabling the matter to be dealt with by someone else).*

14. Dispensations

14.1 *Where you have a Disclosable Pecuniary Interest or other significant interest you may still be able to participate and/or vote at a meeting if you have obtained a dispensation from the Councillor Conduct Committee. A dispensation request form is attached to the Code (Appendix 1).*

14.2 *There are 5 circumstances in respect of which a dispensation may be granted, namely:*

- (a) that so many members of the decision-making body have disclosable pecuniary interests or OSIs in a matter that it would impede the transaction of the business;*
- (b) that, without the dispensation, the representation of different political groups on the body transacting the business would be so upset as to alter the outcome of any vote on the matter;*
- (c) that the dispensation is in the interests of persons living in Medway;*
- (d) that without a dispensation, no member of the Cabinet would be able to participate in this matter, or*
- (e) that it is otherwise appropriate to grant a dispensation.*

- 2.3 Three Cabinet Members who are Directors of Council Companies have written to the Monitoring Officer asking for a dispensation, namely Councillors Doe, Gulvin and Mackness. Their requests are at Appendix 1 to this report.

3. Current position

- 3.1 The Directors are not paid for the work they carry out in the Council Companies of Medway Commercial Group or Medway Development Company Limited. So there is no question that they have a Disclosable Pecuniary Interest in any Cabinet agenda items about their Companies.
- 3.2 The Cabinet is the Shareholder for the Companies and should set the strategic direction of them and hold them to account (along with Scrutiny Committees).
- 3.3 In practice each of the Directors can have an Other Significant Interest when reports come to Cabinet or Council. Members cannot switch off being Directors of the Company they have positions of control and management on. Company Directors have a legal fiduciary duty to promote their companies and to solve conflicts of interest. This might mean they are unable to act in the wider public interest.

4. Advice and Analysis

- 4.1 The Companies that the Council has set up such as Medway Norse, Medway Commercial Group and Medway Development Company Limited have broad aims that if successful will ultimately benefit the Medway public and the Council.
- 4.2 Preventing Member Directors from speaking about their companies at Cabinet and Council seems counter-intuitive. That means the Directors cannot share good news and future plans. That also means Directors cannot answer questions about company performance.
- 4.3 The recommendation at paragraph 8 of this report suggests that dispensations are granted in respect of specific Other Significant Interests only in relation to three named Councillors. Should any Disclosable Pecuniary Interests arise in future for one or more of these named Councillors in relation to their role as Directors the Councillor(s) will need to seek a separate dispensation or ensure that they do not speak or vote on a relevant matter and leave the room for that agenda item.
- 4.4 For those reasons the Monitoring Officer would advise the Committee to consider granting a dispensation under paragraph 14.2 (e) "that it is otherwise appropriate to grant a dispensation." This will enable more transparent accountability of the Council's alternative delivery models.

5. Risk management

- 5.1 Risk management is an integral part of good governance. The Council has a responsibility to identify and manage threats and risks to achieve its strategic objectives and enhance the value of services it provides to the community.

Risk	Description	Action to avoid or mitigate risk
Reputation	The public will not understand why Council appointed Directors are not allowed to report on the activity of their company to Cabinet or Council meetings.	Grant the dispensation

6. Financial and Legal Implications

- 6.1 This report contains no specific financial implications.
- 6.2 The legal implications are contained in the body of the report.

7. Recommendations

- 7.1 That the Committee grants dispensations until 28 June 2019 to Councillors Doe, Gulvin and Mackness for the reasons set out in section 4 of the report to allow participation in debate and/or to vote on any item at Cabinet and Council in which they have an other significant interest as follows:
- 7.1.1 Councillor Doe in relation to his position as Director and Chairman of Medway Development Company Limited.
- 7.1.2 Councillor Gulvin in relation to his position as Director of Medway Development Company Limited.
- 7.1.3 Councillor Mackness in relation his position as Director and Chairman of Medway Commercial Group Limited, Medway Commercial Services Limited and Medway Public Services Limited.

Appendices:

Appendix 1 – Requests for Dispensations

Background Papers:

None

Lead officer contact:

Perry Holmes, Monitoring Officer

Telephone: 01634 332133

Email: perry.holmes@medway.gov.uk

Medway Council Dispensation Request Form

Please give full details of the following in support of your application for a dispensation.

If you need any help completing this form please contact the [Monitoring Officer](#).

Your name	Howard Doe
Decision-making body in respect of which you require a dispensation	Cabinet and Council
Details of your membership of that body	Cabinet Member and Councillor
The business for which you require a dispensation (refer to agenda item number if appropriate)	Any reports relating to Medway Development Company Limited
Details of your interest in that business	Director and Chairman
Date of meeting or time period (up to 4 years) for which dispensation is sought	28 June 2019
Dispensation requested to participate in any discussion of that business	Yes
Dispensation requested to participate in any vote taken on that business	Yes

Signed.....

Dated.....

Please send your completed form to:

Perry Holmes
Monitoring Officer
Medway Council
Gun Wharf
Dock Road
Chatham

ME4 4TR

Or email to
perry.holmes@medway.gov.uk

Medway Council Dispensation Request Form

Please give full details of the following in support of your application for a dispensation.

If you need any help completing this form please contact the [Monitoring Officer](#).

Your name	Adrian Gulvin
Decision-making body in respect of which you require a dispensation	Cabinet and Council
Details of your membership of that body	Cabinet Member and Councillor
The business for which you require a dispensation (refer to agenda item number if appropriate)	Any reports relating to Medway Development Company Limited
Details of your interest in that business	Director
Date of meeting or time period (up to 4 years) for which dispensation is sought	28 June 2019
Dispensation requested to participate in any discussion of that business	Yes
Dispensation requested to participate in any vote taken on that business	Yes

Signed.....

Dated.....

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Perry Holmes
Monitoring Officer
Medway Council
Gun Wharf
Dock Road
Chatham

ME4 4TR

Or email to
perry.holmes@medway.gov.uk

Medway Council Dispensation Request Form

Please give full details of the following in support of your application for a dispensation.

If you need any help completing this form please contact the [Monitoring Officer](#).

Your name	Andrew Mackness
Decision-making body in respect of which you require a dispensation	Cabinet and Council
Details of your membership of that body	Cabinet Member and Councillor
The business for which you require a dispensation (refer to agenda item number if appropriate)	Any reports relating to Medway Commercial Group Limited Medway Commercial Services Limited Medway Public Services Limited
Details of your interest in that business	Director and Chairman
Date of meeting or time period (up to 4 years) for which dispensation is sought	28 June 2019
Dispensation requested to participate in any discussion of that business	Yes
Dispensation requested to participate in any vote taken on that business	Yes

Signed.....

Dated.....

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Monitoring Officer
Medway Council
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