

COUNCILLOR CONDUCT COMMITTEE

8 AUGUST 2018

REQUEST FOR DISPENSATION

Report from/Author: Perry Holmes, Monitoring Officer

Summary

This report seeks a dispensation for a Cabinet Member who is also a Director of a Council Company. It also seeks to widen three dispensations, agreed for Cabinet Members at the Councillor Conduct Committee on 18 April 2018, to provide a dispensation for all Committees, not just Cabinet and Council, as was originally agreed.

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 sections read as follows:

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 A Cabinet Member, Councillor Turpin, who is also a Director of a Council Company, Medway Norse, has written to the Monitoring Officer asking for a dispensation. His request is set out at Appendix 1 to this report.

3. Current position

3.1 Councillor Turpin is not paid for the work he carries out as a Director of Medway Norse. So there is no question that he has a Disclosable Pecuniary Interest in any agenda items about their Companies.

3.2 The Cabinet is the Shareholder for Medway Norse and should set the strategic direction of the company and hold it to account (along with Scrutiny Committees).

3.3 In practice Councillor Turpin could have an Other Significant Interest when reports come to Council committee meetings. 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.

3.4 At Councillor Conduct Committee on 18 April 2018, dispensations were granted for Councillors Doe, Gulvin and Mackness in relation to the Council Companies for which they hold Director positions. These dispensations were granted in respect of participation in Cabinet and Council meetings only.

4. Advice and Analysis

4.1 The Companies that the Council has set up such as Medway Norse, 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 7 of this report suggests that a dispensation is granted for Councillor Turpin in respect of specific Other Significant Interests only. Should any Disclosable Pecuniary

Interests arise in future in relation to his role as Director, Councillor Turpin will need to seek a separate dispensation or ensure that he does not speak or vote on a relevant matter and leaves the room for that agenda item.

- 4.4 For those reasons the Monitoring Officer would advise the Committee to consider granting a dispensation for Councillor Turpin, 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.
- 4.5 At the Councillor Conduct Committee meeting on 18 April 2018 it was agreed that Cabinet Members who are appointed to Council owned companies be asked to include activities of those companies in their reports when they are being held to account by Overview and Scrutiny. However, the dispensations granted at the same meeting for Councillors Doe, Gulvin and Mackness, provided dispensations for those Members to participate and vote in matters related to the Council companies they are Directors of, in Cabinet and Council meetings only. They would therefore not be able to participate in any discussion relating to those companies. The Monitoring Officer would therefore advise the Committee to agree to widen those dispensations to be relevant to all other Council committees also.

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 a dispensation until 28 June 2019 to Councillor Turpin 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,

Council and any other Committee meeting of the Council in which he has an other significant interest in relation to his position as Director of Medway Norse.

7.2 That the dispensations granted for the following Councillors on 18 April 2018, be widened to allow them to also participate and/or vote on any item at Cabinet, Council **and any Committee of the Council** in which they have an other significant interest in relation to their positions as Directors of Council companies::

- (i) Councillor Doe in relation to his position as Director and Chairman of Medway Development Company Limited;
- (ii) Councillor Gulvin in relation to his position as Director of Medway Development Company Limited;
- (iii) Councillor Mackness in relation to his position as Director and Chairman of Medway Commercial Group Limited, Medway Commercial Services Limited and Medway Public Services Limited.

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Appendices:

Appendix 1 – Request for Dispensations

Background Papers:

None