

COUNCILLOR CONDUCT COMMITTEE

12 DECEMBER 2018

REQUEST FOR DISPENSATION

Report from/Author: Perry Holmes, Monitoring Officer

Summary

This report informs the Committee of a dispensation that has been granted by the Monitoring Officer for a Cabinet Member who is also a Director of a Council Company.

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.
- 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 Doe, who is also a Director of a Council Company, Medway Commercial Group Ltd, wrote to the Monitoring Officer asking for a dispensation, following his appointment on 14 November 2018. His request is set out at Appendix 1 to this report.

3. Current position

3.1 Councillor Doe is not paid for the work he carries out as a Director of Medway Commercial Group Ltd. 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 Commercial Group and should set the strategic direction of the company and hold it to account (along with Scrutiny Committees).

3.3 In practice Councillor Doe 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 The decision whether to grant dispensations on request is a matter for this Committee. However, section 6.17 of the Employee Delegation Scheme, within the Council's Constitution provides the Chief Legal Officer with a delegation to:

“consider and determine any requests for dispensations from Medway Members and voting and non-voting co-opted Members in cases where the timing of a request would make it impractical to convene a meeting of the Committee”.

4. Advice and Analysis

4.1 The Companies that the Council has set up such as Medway Commercial Group Ltd, 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 Councillor Doe was appointed as Director to Medway Commercial Group Ltd on 14 November 2018. Councillor Doe requested a dispensation to be put in place so that he could participate in the consideration of the six monthly report on Medway Commercial Group Ltd which was being considered by Cabinet on 20 November 2018. This meant there was insufficient time for the dispensation request to be considered by the Councillor Conduct Committee.
- 4.4 The Councillor Conduct Committee has agreed similar dispensations on 18 April 2018 and 8 August 2018 to Cabinet Members in relation to the Council Companies for which they hold Director positions. These were granted to enable more transparent accountability of the Council's alternative delivery models
- 4.5 Should any Disclosable Pecuniary Interests arise in future in relation to his role as Director, Councillor Doe 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.
- 4.6 The Monitoring Officer therefore exercised his delegation and granted a dispensation for Councillor Doe on 19 November 2018. The dispensation was granted under the same terms as those agreed at the Councillor Conduct Committee on 8 August 2018 and was therefore granted until 28 June 2019 to allow Councillor Doe to participate in debate and/or to vote on any item at Cabinet, Council and any other Committee meeting of the Council (except regulatory committees) in which he has an other significant interest in relation to his position as Director of Medway Commercial Group Ltd.

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 The Committee is recommended to note that the Monitoring Officer granted a dispensation until 28 June 2019 to Councillor Doe 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 (except regulatory committees) in which he has an other significant interest in relation to his position as Director of Medway Commercial Group Limited.

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Appendices:

Appendix 1 – Request for Dispensation

Background Papers:

None