

ITEM 4(a)(iv)

MILTON KEYNES COUNCIL

22 NOVEMBER 2017

Report considered by the Constitution Commission

DISCLOSABLE PECUNIARY INTERESTS

1. Purpose

- 1.1 To make a recommendation to the Commission regarding amendments to the Council and Cabinet Procedure Rules in respect of Disclosable Pecuniary Interests (DPIs) and other personal interests.

2. Recommendation

- 2.1 That the Commission recommends to Council that the Council and Cabinet Procedure Rules are amended in respect of the Disclosable Pecuniary Interests, namely:
 - (a) by removing the Cabinet Procedure Rule 3.4 or amending the rule so it only applies to other personal interests and not DPIs; and
 - (b) by removing paragraphs (d) and (e) of Council Procedure Rule 19.5, or amending the Procedure rule so it only applies to other personal interests and not DPIs;

The relevant rules are set out in Annex A.

- 2.2 To provide views on whether councillors should be required to leave the room where they have a DPI or other personal interest on a matter in a meeting and provide a recommendation to Council to amend the constitutional provisions if necessary.

3. Context

- 3.1 Cabinet Procedure Rule 3.4 and Cabinet Procedure Rules 19.5(d) and 19.5(e)

On 15 June 2015 the Council was given legal advice in relation to Disclosable Pecuniary Interests, as set out in Annex B. This advice recommended amending the Council's Constitution to bring it in line with the statutory provisions in relation to the Disclosable Pecuniary Interests as set out in the Localism Act 2011 by amending the Rule 3.4 of the Cabinet Procedure Rules. However, due to an oversight this rule had not been amended. In addition, similar provisions in Council Procedure Rules 19.5(d) and (e) have remained in the Council's Constitution. This is contrary to the statutory provisions and a councillor would be committing a criminal offence if he / she continued to participate in the matter in which he / she had a DPI, even though this is currently allowed under the Council's Constitution.

4. Constitution

- 4.1 Cabinet Procedure Rule 3 and the Council Procedure Rule 19.5 deal with conflicts of interest and govern the way in which the Council deals with Disclosable Pecuniary Interests at Council and Cabinet meetings.

5. Issues

- 5.1 Speaking when you have a DPI

These Procedure Rules allow councillors with DPIs to exercise the ability to address the meeting as a member of the public. However, this conflicts with section 31(4) of the Localism Act 2011 which prohibits councillors from participating in the item in which they have a DPI. The Council's procedure rules cannot override the statutory provisions and councillors will be committing a criminal offence if they participate at the meeting on an item in which they have a DPI.

As such, it is recommended that the Cabinet Procedure Rule 3.4 and Council Procedure Rules 19.5 (d) and (e) are removed in their entirety. Alternatively, the Council may choose to amend these rules so they only apply in relation to personal interests.

- 5.2 Leaving the room?

It has been queried by councillors whether they need to leave the room if they have a DPI on a matter in the meeting. Whilst there is no legal requirement for councillors to leave the room when they have a DPI, it is matter of choice for the Council whether this is required by the Council's Procedure Rules. Currently, both Council and Cabinet Procedure Rules state that in relation to both the DPIs and other personal interests, members "*must retire the public gallery or other area aside from the meeting*". This wording suggests that the members are not required to leave the room, but is not entirely clear and may be open to interpretation. Therefore, it would be helpful to seek clarification of what was intended by the Council by this wording and to amend this provision if it is considered necessary.

A number of other authorities' constitutions require councillors with DPIs to leave the room, including Luton and Northampton Borough Councils and Sunderland City Council. However, this position is slightly different in relation to personal interests. For example, in Luton councillors are required to leave the room only once they have made their representations, however in Northampton councillors are allowed to participate and vote in a matter in which they have a personal interest. Relevant constitutional provisions of these authorities are set out in Annex C.

6. Advice

- 6.1 That the Council's constitution is amended in accordance with the legal advice received on 15 June 2015 and as set out in this report.
- 6.2 That the councillors with DPIs be required to leave the room on the item in which they have a DPI in a meeting.

7. Options

- 7.1 Make a recommendation to Council to amend the Council and Cabinet Procedure Rules 19.5(d) and (e) in accordance with the legal advice received; and
- 7.2 Clarify whether the members are required to leave the room if they have a DPI/other personal interest in relation to an item that is being considered at the meeting and amend the relevant constitutional provisions if necessary.

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