

DISCLOSABLE PECUNIARY INTERESTS – LEGAL ADVICE

The provisions relating to disclosable pecuniary interests (“DPIs”) are contained in the Localism Act 2011 (“the Act”), section 31 of which states:

- (1) Subsections (2) to (4) apply if a member or co-opted member of a relevant authority—
 - (a) is present at a meeting of the authority or of any committee, subcommittee, joint committee or joint sub-committee of the authority,
 - (b) has a disclosable pecuniary interest in any matter to be considered, or being considered, at the meeting, and
 - (c) is aware that the condition in paragraph (b) is met.
- (4) The member or co-opted member may not—
 - (a) participate, or participate further, in any discussion of the matter at the meeting, or
 - (b) participate in any vote, or further vote, taken on the matter at the meeting,

but this is subject to section 33.

Section 33 provides for dispensations to be granted “relieving the member or co-opted member from either or both of the restrictions in section 31(4) in cases described in the dispensation.” Therefore, it is possible to grant a dispensation enabling a member to participate but not to vote on a matter.

Section 31 (10) states, “Standing orders of a relevant authority may provide for the exclusion of a member or co-opted member of the authority from a meeting while any discussion or vote takes place in which, as a result of the operation of subsection (4), the member or co-opted member may not participate”.

The categories of DPIs are set out in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012/1464.

The categories of DPIs are relatively limited and extend only to those interests of the member/co-opted member and their spouse or partner. There are many other categories of interest where, if a member were to participate in the decision making, an issue of bias could arise. An obvious example of this would be where a committee was considering a planning application made by a member’s brother or son. This would not give rise to a DPI but nevertheless would clearly be inappropriate. Therefore, many local authorities have included within their code of conduct other categories of interest which go beyond just DPIs. This is permitted under section 28 of the Act.

The provision in the Procedure Rules (Standing Orders) in the Council's constitution purports to enable members with DPIs to exercise the ability to address the meeting as a member of the public in accordance with these Procedure Rules.

However, this clearly conflicts with section 31(4) of the Act which states that members with a DPI may not participate in the item in which they have a DPI. Clearly the Council's procedure rules cannot override the statutory wording so the legislative provisions prevail and members will still be committing a criminal offence if they participate at a meeting on an item in which they have a DPI. The Council should change its constitution to ensure that it complies with the law.

You will be aware that under the previous national member conduct regime (which was abolished by the Act) there was a provision in the Code which was of the same effect as the wording in the Council's Rules of Procedure, enabling members to make representations on a matter even where they had a prejudicial interest if a member of the public had the right to do so. However, there is no equivalent provision in relation to DPIs. The Council is able to adopt these rules of procedure in relation to interests which are not DPIs, so it could decide to retain the provision in relation to "other interests". The only way in which a member could be allowed to participate in a matter in which they have a DPI is for a dispensation to be granted. I agree with the interpretation of the legislation on this point set out in the Guidance.

In conclusion the Council's Rules of Procedure on this point do not comply with the legislation. In such circumstances the legislation prevails and cannot be overridden by the Rules in the Constitution. The Council should urgently seek to amend its Rules of Procedure to secure compliance with the law. If members are permitted to speak and participate on an item where they have a DPI then they are at risk of committing a criminal offence."