



PART A:	MATTERS DEALT WITH UNDER DELEGATED POWERS
REPORT TO:	OVERVIEW AND SCRUTINY COMMITTEE
DATE:	21 FEBRUARY 2013
REPORT OF THE:	COUNCIL SOLICITOR AND MONITORING OFFICER ANTHONY WINSHIP
TITLE OF REPORT:	APPLICATION FOR DISPENSATION – SETTING THE COUNCIL BUDGET
WARDS AFFECTED:	ALL

EXECUTIVE SUMMARY

1.0 PURPOSE OF REPORT

- 1.1 To ask the Overview and Scrutiny Committee to consider granting a dispensation to members of the Council who have a disclosable pecuniary interest or other personal and pecuniary interest in the setting of the Council budget.
- 1.2 The Committee's terms of reference provide for it to grant dispensations.

2.0 RECOMMENDATIONS

- 2.1 That the Overview and Scrutiny Committee acting in its Corporate Governance role:
- (i) Grants a dispensation to all Members of the Authority to enable all Members to participate in full in all decisions relating to the setting of the Council's budget and Council Tax.
 - (ii) Approves the dispensation for a period of more than 2 years until 28 February 2015.

3.0 REASON FOR RECOMMENDATIONS

- 3.1 To allow a sufficient number of Members to be able to participate in decision making relating to the setting of the Council's budget and Council Tax despite the fact that they may have a Disclosable Pecuniary Interest in these matters.

4.0 SIGNIFICANT RISKS

- 4.1 That Members are prevented from participating in the Budget setting for the Council due to Disclosable Pecuniary Interests thereby leaving the Council in breach of its statutory duties. This risk is wholly mitigated by the grant of dispensation. The risk matrix may be seen at Annex A.

5.0 POLICY CONTEXT AND CONSULTATION

- 5.1 Officers of the authority have been notified of the proposal to seek the dispensation if appropriate.
- 5.2 The setting of the Council's budget affects all of the Council's aims and priorities.

REPORT

6.0 BACKGROUND AND INTRODUCTION

- 6.1 The Council is under a statutory duty to set a budget. Under the previous standards regime, Councillors could rely on a specific exemption in relation to the setting of council tax and a precept. This provision has been repealed and as such a dispensation is required to enable the participation of all Councillors in relation to the setting of the Council's budget (which includes the setting of the Council Tax) at the Budget Council meeting on Tuesday, 26 February 2013.
- 6.2 All Councillors have completed their Registers of Interests as required by the Localism Act 2011, and as such councillors have declared Disclosable Pecuniary Interest (DPI). If a member has a DPI in a matter that is being considered at a meeting, they are required, by the Localism Act to leave the room and not participate in the debate or vote on the item. In accordance with the Members' Code of Conduct, the Member is also required to declare their interest.
- 6.3 Under the old standards regime, the legislation provided an exemption to members who had prejudicial interest in the setting of budgets and precepts. This exemption has been repealed and in effect requires members to declare DPIs. The most relevant DPI will be the disclosure of land owned in the authority area, including the details of their home addresses.
- 6.4 The DPIs where Members will find themselves under a disability may be identified as interests in property and Membership of Unincorporated Associations as described below.

Land

- 6.5 This DPI covers any property in the Council's area in which a Member has a beneficial interest and, therefore, includes Members' or their spouses' or partners' homes. On the face of it property interests are directly affected by the level of Council Tax. As almost all Members have registered such an interest it is clear that paragraph 33 (2) (a) of the 2011 Act (set out in paragraph 7.11 below) applies.

Membership of Unincorporated Associations

- 6.6 Officers have also identified a second area of concern where Members might be under a disability in the budget process as a result of their involvement in voluntary and community bodies. The statutory list of DPIs does not include, as such, membership or involvement with such organisations. Although Members are required to register their interests where they have a beneficial interest in an outside body and/or may make a profit from the body concerned, most if not all, the outside bodies supported by the Council are non-profit making and, probably, the legislation was not intended to catch membership of voluntary community organisations.
- 6.7 Members are, however, required to register/declare contracts between themselves and the Council. The grant conditions imposed by the Council on the organisations it funds are, arguably, contracts as they require the performance of certain services as

a condition of the grant. Most of these organisations are un-incorporated and so their legal identity is nothing more than the individuals who make up the organisation. Where the grant conditions are signed by a Council Member for the organisation he or she may be deemed to have a DPI in the business of determining the grant to that body. It is less clear that a Member who is on the Management Committee of an organisation would have a relevant DPI.

- 6.8 As the Council is required by law to set a budget and a Council Tax it is, therefore, important to ensure that meetings are quorate, to ensure that a decision can be taken. Failure to set a budget and a Council Tax would have serious implications for the Council.
- 6.9 Due to the number of Councillors who have disclosed a relevant DPI on their register; there is a real risk that without a dispensation the Council meeting item dealing with the budget and setting the Council Tax would be inquorate.
- 6.10 Furthermore, it is considered inappropriate that any Member should be prevented from participating in the budget process being one of if not the most important function of the Council either because they have an interest which is shared in common with many thousands of residents or, in the case of membership of voluntary or community organisations, where they have a community role which is not pursued for profit or gain.

Issues

- 6.11 The provisions on dispensations are significantly changed by the Localism Act 2011. The 2011 Act allows the Council to grant dispensation in the following circumstances for a specified period of time not exceeding 4 years:
- (i) That so many members of the decision-making body have DPIS in a matter that it would "impede the transaction of the business". In practice this means that the decision-making body would be inquorate as a result;
 - (ii) 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.;
 - (iii) That the authority considers that the dispensation is in the interests of persons living in the authority's area;
 - (iv) That the authority considers that it is otherwise appropriate to grant a dispensation.
- 6.12 Council at its Annual Meeting on 17 May 2012 delegated authority to grant dispensations in respect of applications for dispensations in relation to (i) - (iv) above. That authority has been delegated to the Overview and Scrutiny Committee in its Corporate Governance capacity.
- 6.13 In the current situation, it is considered that the request for dispensation falls in to category (i), (ii), (iii) and (iv) above.
- 6.14 If a Member has either a Disclosable Pecuniary Interest or a Personal and Pecuniary Interest, they are prohibited from participating in the debate and vote on the item.
- 6.15 Due to the number of councillors who have disclosed a relevant DPI on their register; there is a real risk that without a dispensation a significant number of Councillors

could be required to declare an interest and as such be prevented from participating in the decision making process. The lack of the ability of a significant number of councillors to participate could have the impact of upsetting the political balance of the meeting at which the decision is to be made.

6.16 Dispensations can be granted for up to 4 years.

Conclusions

6.17 The Overview and Scrutiny Committee has the requisite power to grant a dispensation in this case to allow Members with interests to fully participate in meetings and decisions relating to the setting of the Council's budget and Council Tax.

6.18 Having taken account of the number of Members who may be affected as a result of the completion of their Registers of Interests, it is considered appropriate to grant a dispensation to all Members for a period of more than two years (until 28 February 2015) so as to enable all Members to participate.

7.0 IMPLICATIONS

7.1 The following implications have been identified:

a) Financial

The Council is required by law to set a budget and failure to do so would have very significant implications.

b) Legal

The Localism Act enables the Council to consider applications for dispensations in the accordance with the grounds referred to at paragraph 7.11 above. In order to grant a dispensation, the Committee needs to be satisfied that on the information available, the application meets the criteria for a dispensation on grounds (i), (ii), (iii) and (iv) referred to at a paragraph 7.11 above. Since the Council is required by law to set a budget it is, therefore, important to ensure that meetings are quorate, so as to ensure a decision can be taken. Failure to set a budget will have serious implications for the Council.

c) Other (Equalities, Staffing, Planning, Health & Safety, Environmental, Crime & Disorder)

An equalities impact assessment is not considered necessary in this instance.

Anthony Winship
Council Solicitor

Author: Anthony Winship, Council Solicitor
Telephone No: 01653 600666 Ext: 267
E-Mail Address: anthony.winship@ryedale.gov.uk

Background Papers:

Code of Conduct for Members of Ryedale District Council dated 12 July 2012

APPLICATION FOR DISPENSATION – SETTING THE COUNCIL BUDGET - ANNEX A

Issue/Risk	Consequences if allowed to happen	Likelihood	Impact	Mitigation	Mitigated Likelihood	Mitigated Impact
That Members are prevented from participating in the Budget setting for the Council due to Disclosable Pecuniary Interests thereby leaving the Council in breach of its statutory duties.	The Council would be in breach of its statutory duties to set a budget and Council Tax.	2	D	Grant dispensation	1	A

Score	Likelihood	Score	Impact
1	Very Low	A	Low
2	Not Likely	B	Minor
3	Likely	C	Medium
4	Very Likely	D	Major
5	Almost Certain	E	Disaster

ANNEX A