

Report to: Standards Committee



Date of Meeting 13th October 2020

Document classification: Part A Public Document

Exemption applied: None

Review date for release N/A

Dispensation request from Cllr Paul Hayward

Report summary:

Cllr Paul Hayward has requested a dispensation to permit him to participate in and vote on matters in which he has a pecuniary interest, namely being the Clerk for three parish councils within the administrative area of East Devon and the employment in the NHS of a relevant person. It is for the committee to decide whether to grant Cllr Hayward a dispensation.

Recommendation:

That the Committee decide whether to grant Cllr Paul Hayward a dispensation under S.33 of the Localism Act 2011.

Reason for recommendation:

It is a decision for the Standards Committee to decide whether to grant the dispensation having regard to all relevant circumstances.

Officer: Henry Gordon Lennox, Monitoring Officer

Portfolio(s) (check which apply):

- Climate Action
- Corporate Services and COVID-19 Response and Recovery
- Democracy and Transparency
- Economy and Assets
- Coast, Country and Environment
- Finance
- Strategic Planning
- Sustainable Homes and Communities

Financial implications:

There are no financial implications arising

Legal implications:

Council have delegated the responsibility for deciding dispensations to the Standards Committee. It is for the Committee to decide, having regard to the comments in paragraph 3, whether to grant Cllr Hayward a dispensation or not.

Equalities impact Low Impact

Climate change Low Impact

Risk: Low Risk

Links to background information None

Link to Council Plan:

Priorities (check which apply)

- Outstanding Place and Environment
 - Outstanding Homes and Communities
 - Outstanding Economic Growth, Productivity, and Prosperity
 - Outstanding Council and Council Services
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Report in full

1. The Localism Act 2011 and the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 create a framework within which a member must declare their pecuniary interests (being those prescribed in law) and where such an interest arises in any matter to be considered at a meeting then this must be declared and the member must not participate in any discussion or vote at the meeting. This is essentially achieved by the member leaving the room. It is an offence for a member to participate in and / or vote on a matter in which they have a pecuniary interest.
2. Section 33(2) of the Localism Act 2011, permits an authority to grant a dispensation from either or both of the restrictions not to participate and / or vote on a matter in which they have a pecuniary interest.
3. An authority may only grant a dispensation where, having had regard to all relevant circumstances, the authority;
 - (a) *considers that without the dispensation the number of persons prohibited [...] from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business,*
 - (b) *considers that without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business,*
 - (c) *considers that granting the dispensation is in the interests of persons living in the authority's area,*
 - (d) *if it is an authority [...] operating executive arrangements, considers that without the dispensation each member of the authority's executive would be prohibited [...] from participating in any particular business to be transacted by the authority's executive, or*
 - (e) *considers that it is otherwise appropriate to grant a dispensation.*
4. Any dispensation granted by the authority must specify the period for which it has effect, and the period specified may not exceed four years.
5. Cllr Paul Hayward has requested that the Council grant a dispensation for the reasons detailed in the request which is below;

Cllr. Paul Hayward, Yarty Ward

phayward@eastdevon.gov.uk

31st January 2020

Dear members of Standards Committee

Following email correspondence with our monitoring officer, Henry has suggested that I write formally to the committee (as no prescribed form exists) to seek a dispensation for my role as Clerk to the three parish

councils of All Saints, Chardstock and Newton Poppleford, and also in respect of the rather tenuous (but still technically valid pecuniary interest) that I have for NHS matters involving the RDE NHS Trust, my wife's employer (and my two daughters it should perhaps also be noted).

By way of background, Axminster Town Council afforded me a dispensation as a Town Councillor for the latter topic above on the grounds that it served the wider public interest better for me to be involved in such discussions than it would for my exclusion on pecuniary grounds (which, of course, in this modern age is somewhat an anachronism as Helen's wages are her own and she is no longer considered to be my chattel - if ever that were the case anyhow!)

Using the 2011 Localism Act as my point of reference, and particularly the clause whereby "***it would be in the interest of persons living in the Council's area***", may I (through this committee) apply in both cases for the dispensation to be afforded? I personally can see no objection to the former as my role as Clerk is well defined - I produce minutes of meetings where elected Councillors make democratic decisions although I accept that, like all officers, I am asked to give advice from time to time (although not always acted upon) but, ultimately, I have no direct say in the decisions of Council which are determined by members of Council, not by their employee. The only time that I would intervene is when a proposal or resolution is likely to breach the law, whereupon I would contest that my actions are certainly in the public interest as this is my primary role as their Proper Officer.

With regards to the latter, my wife is employed in such a capacity as to be highly unlikely to be in a position whereby she could materially affect NHS policy or practice (she is currently a Grade 3 HCA and trainee phlebotomist) and is employed across the district wherever the clinical need arises and thus her employment is not intrinsically linked to any particular hospital or location. I can not perceive where any matter that we, as District Councillors, are asked to vote upon would impact directly on her, and thus her ability to earn a salary (concentrating on the pecuniary element) as her employer is the NHS RDE Trust and not an individual hospital or site, although geographically she flits between Sidmouth, Seaton and Axminster as she does not wish to drive any considerable distance to work.

I do hope that the DC can follow Axminster TC's example in granting such a dispensation (and I am sure Henry will be able to offer specific legislative advice on the practicalities and protocols) and, as such, I hope to hear from you in this respect as time permits.

Best wishes

Cllr. Paul Hayward
By Email

6. Noting the request above, it is difficult to see how any of a), b) or d) in paragraph 3 above could be met. However it would be open for the Committee to decide that either / both c) and e) are met. Should the Committee decide to approve the request it will need to determine the nature of the dispensation – so what it covers and whether it permits participation and / or voting and how long it is granted for.