

Audit and Governance Committee

Date of Meeting: 30th July 2020

Report Title: Community Governance Review: Members' Interests

Senior Officer: Director of Governance and Compliance

1. Report Summary

1.1. This Report is an overview of the various levels in which Cheshire East Members may engage with the Community Governance Review, the potential interests which may arise, those parts of the Member Code of Conduct which relate to them and the measure by which they may be addressed.

2. Recommendations

2.1. That the Audit & Governance committee grants a general dispensation allowing Members to take part in and vote on Community Governance Review matters in which they have disclosable pecuniary and prejudicial interests for a 4-year period up to 29 July 2024.

3. Reasons for Recommendations

3.1. Given the wide-ranging circumstances in which members will be required to engage in decision making it is important that the Audit & Governance Committee considers granting a general dispensation for pecuniary and prejudicial interests arising as a result of the Community Governance Review. This can be justified on the grounds that without such dispensation:

- the number of Members barred from participating would be so great as to impede the reasonable transaction of the business
- it would be otherwise appropriate to grant a dispensation

4. Other Options Considered

4.1. Not applicable this is a non-executive matter.

5. Background

5.1. On 20th September 2018, the Constitution Committee decided to undertake a borough-wide Community Governance Review, to be conducted by its Sub-Committee and commenced after the May 2019 elections. Members will become involved in the Review at several levels. Potentially, Cheshire East Members may be involved in the Review at one or more of five levels.

5.2. Sitting at Full Council they will

- consider the recommendations of the Constitution Committee
- decide the extent to which they will give effect to those recommendations and
- make the Cheshire East Community Governance Review Order accordingly
- include in the Order any necessary consequential provisions regarding the transfer of property, funds, responsibilities or liabilities between parishes.

5.3. Sitting on the Constitution Committee they will

- consider the review and recommendation of the Sub-Committee and recommend to Full Council which parish areas, names and electoral arrangements should be retained, which may be changed, and in what way.

5.4. Sitting on the Community Governance Review Sub-Committee subject to advice, (from the necessary officers concerned) conduct a borough-wide Review. This will necessarily involve:

- consulting interested parties;
- making recommendations to the Constitution Committee whether the areas of existing parishes should be retained, altered (for example through amalgamation or separation) or abolished and or whether parish names should be changed or retained and or whether changes to the electoral arrangements should be made.

5.5. If Members are also Parish Councillors, they may take part in at least three consultation stages, debating and framing parish consultation responses. Their participation may involve comments, proposals and objections regarding the area and governance arrangements of their own parish and related changes to adjoining parishes. As parish areas and the

number of electors change, parish precepts may rise or fall. As electoral arrangements change, the number of councillor seats may rise or fall.

5.6. Finally Members may have a variety of interests in the Review in their capacity as local residents and members of local community groups.

5.7. Data concerning the number of Members who are also members of Town or Parish Councils ('dual hatted') indicates that fifty four (or 66%) of the Council's total Membership of eighty one are 'dual hatted'.

6. The Cheshire East Member Code of Conduct

6.1 The Code governs five types of interests which may arise: disclosable pecuniary interests, personal interests, prejudicial interests, bias and predetermination.

6.2 Unless they have a dispensation, Members should take no part in matters in which they have a disclosable pecuniary interest. The definition of disclosable pecuniary interest covers an office carried on for employment or gain.

6.3 Members should declare a personal interest in matters likely to affect any body exercising functions of a public nature (ie: a Parish Council) where they are members of that body or in a position of general control or management.

6.4 Members need not declare a personal interest in matters affecting their own wellbeing or financial position as long as they (or their family, close associates, employers, partnerships, companies) are not affected to a greater extent than the majority of other Council tax payers, ratepayers, or inhabitants of the electoral division or ward, as the case may be, are affected by the decision. This may cover a rise or fall in precept.

6.5 A personal interest will become a prejudicial interest where the matter (ie: the Community Governance Review) affects the financial position of a public body (ie: a Parish Council) and if it is one which a member of the public with knowledge of the relevant facts, would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest.

6.6 Beyond exercising public speaking rights, Members should take no part in a matter if they are or appear biased or have predetermined a matter. Members are allowed a predisposition: previous actions or statement will not be taken by themselves as proof of predetermination but Members must not approach a decision with their minds made up.

6.7 In limited circumstances, the Audit & Governance committee may grant dispensations allowing Members to take part in and vote on matters in which they have disclosable pecuniary interests and prejudicial interests: this does not extend to cases of predetermination.

7. Measures Available to Address Conflicts of Interest

7.1 On 29th September 2016 the Audit & Governance Committee granted six general dispensations until 28th September 2020 for decisions regarding:

- Members allowances, payments or indemnities
- Ceremonial Honours
- Statutory Sick Pay
- Setting Council Tax or precepts
- Setting Council Tax Reduction Schemes or Local schemes for business rates
- School meals, transport or travelling expenses.

7.2 On 18th February 2016, the Audit & Governance Committee delegated power to the then Director of Legal Services and Monitoring Officer in consultation with the Committee Chair and Members, to grant dispensations in relation to disclosable pecuniary interests in five cases:

- the number of Members barred from participating would be so great as to impede the transaction of the business
- the number of Members barred from participating would upset the political balance so as to alter the likely outcome of the vote
- dispensation would be in the interests of persons living in the borough
- every Cabinet Member would be barred from participating in an Executive decision
- it would be otherwise appropriate to grant a dispensation.

7.3 As work on the Community Governance Review progresses towards discussion of parish-specific options and proposals, in addition to the Audit & Governance Committee dispensation for prejudicial interests, the Monitoring Officer will also consider which combination of

- Monitoring Officer dispensations for disclosable pecuniary interests
- standing, general declarations for all Members, recorded at the outset of Council, Committee and Sub-Committee meetings

supported by

- general Advice Notes to Members with shared roles & interests
- specific advice to individual Members on their particular circumstances ie:
 - declaration of personal or prejudicial interests
 - declaration of involvement but retention of an open mind
 - avoidance of participation at particular stages

will best address the circumstances and issues actually arising. It should be noted that a dispensation does not absolve members from the requirement to declare personal or prejudicial interests.

8. Implications of the Recommendations

8.1. Legal Implications

- Parties aggrieved by a Community Governance Review Order may apply for judicial review on grounds which may include unfair or biased process or consideration. The risk of challenge may be mitigated by observance of the Council's Code of Conduct and implementation of the several measures available to address conflicts of interest. This includes a general dispensation allowing Members to take part in and vote on Community Governance Review matters in which they have disclosable pecuniary interests and prejudicial interests - the subject of this report.

8.2. Finance Implications

- There are no financial implications

8.3. Policy Implications

- There are no policy implications

8.4. Equality Implications

- Section 149 of the Equality Act 2010 creates a single general public sector equality duty (PSED). It has applied to 'public authorities' exercising 'public functions' since April 2011.

The Equality Act 2010 ('the Act') is concerned with discrimination and harassment in respect of 9 'protected characteristics:'

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

The PSED requires public authorities to have 'due regard' to the need to:

- eliminate discrimination, harassment, victimisation & other conduct prohibited by the Act
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- The need to foster good relations between persons who share a relevant protected characteristic and those who do not share it. This includes having due regard to the need to tackle prejudice and to promote understanding.

The High Court has set out general principles about complying with the due regard requirement:

- There should be a proper analysis of all the relevant material and an appreciation of the duty to have due regard.
- Regard should be had to the duty to have due regard before, and at the time, a decision is considered: integrated in the decision-making process, not a 'box-ticking' exercise.
- The duty is a continuing one.
- The duty is non-delegable.
- The duty to have due regard should be exercised with rigour and an open mind.
- The duty should be reconsidered if new information comes to light.
- Adequate records should be kept of the consideration and decision-making processes.
- It is good practice to refer expressly to the PSED and any considerations under it.

A formal equality impact assessment (EIA) is not a mandatory requirement of the obligation to have due regard. However, it may be difficult to demonstrate due regard without evidence that appropriate analysis of the equality implications of a particular decision has been undertaken, and such analysis may be facilitated by an EIA.

The Equality and Human Rights Commission recommends undertaking an analysis of the effects on equality of the particular decision (an 'equalities analysis'). This exercise enables a systematic assessment of the adverse impact of any decision to be carried out and evidenced; which should assist in resisting any legal challenge.

- Democratic Services will undertake an equalities assessment prior to the launch of the consultation on the councils' proposals.

8.5. Human Resources Implications

- There are no Human Resources Implications

8.6. Risk Management Implications

- Please see Paragraph 7 above.

8.7. Rural Communities Implications

- The review is being conducted across the Cheshire East Borough, significant parts of which are rural. The review will be conducted in such a way as to ensure that all sections of the Cheshire East community, including residents and businesses of rural areas, are given equal opportunity to have a voice in responding to process, whether by way of consultation responses, or otherwise.

8.8. Implications for Children & Young People/Cared for Children

- There are no direct implications for children and young people/cared for children.

8.9. Public Health Implications

- There are no direct implications for public health.

8.10. Climate Change Implications

- There are no direct implications for Climate Change Implications.

9. Ward Members Affected

9.1. The implications are borough wide.

10. Consultation & Engagement

10.1. A Community Governance Review in respect of town and parish councils in the Borough will provide the opportunity for Cheshire East Council to review and make appropriate changes to town and parish council community governance. This Review will require the Council to consult with local people and other bodies, and to take account of representations received in connection with the Review. Although the Review would cover the whole Borough, it is anticipated that changes to governance arrangements would not be requested or required in the majority of cases in our town and parish councils. As noted, formal consultation on published draft recommendations will take place once the proposals to be consulted upon have been agreed.

11. Access to Information

- 11.1. Members of the Committee may wish to consider the Member Code of Conduct:

<https://www.cheshireeast.gov.uk/pdf/council-and-democracy/councillors-and-councillor-conduct/members-code-of-conduct.pdf>

- 11.2. Members of the Committee may wish to consider more details about the review and its terms of reference can be seen in the report to the Constitution Committee on 20 September 2018

<http://moderngov.cheshireeast.gov.uk/ecminutes/mgConvert2PDF.aspx?ID=65824&ISATT>

12. Contact Information

- 12.1. Any questions relating to this report should be directed to the following officer:

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