

Report of:	Executive Member for Finance and Governance and Director of Legal and Governance Services
Submitted to:	Standards Committee
Date:	17 October 2022
Title:	Dispensation in respect of a Disclosable Personal Interest
Report for:	Decision
Status:	Public
Strategic priority:	All
Key decision:	No
Why:	Not applicable
Urgent:	No
Why:	Not applicable

Executive summary

The report is required to provide Standards Committee with the information needed to allow them to consider the application for a dispensation under the Code of Conduct.

The decision required is as follows:

That the Standards Committee determine the following:

- a) Whether the dispensation is required?
- b) Whether to grant the dispensation and the terms of the dispensation?
- c) Whether the dispensation should extend to voting as well as participation in debate; and
- d) The length of time the dispensations should operate for.

Purpose

1. The purpose of this report is for Standards Committee to determine a request from Councillor David Coupe for a dispensation to allow him to continue to attend and participate in the Pension Fund Committee notwithstanding his Disclosable Personal Interest arising from his appointment as a Non-Executive Director of Border to Coast Pensions Partnership Limited.

Background and relevant information

2. Under s31 (4) of the Localism Act 2011 an Elected Member who has a DPI in a matter under consideration is not permitted to participate in the discussion or vote on the matter unless s/he has first obtained a dispensation under s33.
3. Section 33 (2) includes a number of situations where a dispensation can be considered, but should be granted "only if, after having regard to all relevant circumstances" the Committee considers that one of those situations applies.
4. The statutory grounds under s33 (2) for the granting of a dispensation are where the authority –
 - (a) considers that without the dispensation the number of persons prohibited by section 31(4) 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 to which Part 1A of the Local Government Act 2000 applies and is operating executive arrangements, considers that without the dispensation each Elected Member of the authority's executive would be prohibited by section 31(4) 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.
5. In this instance the dispensation is sought for Cllr David Coupe under ground e) above for the reasons set out below.

Proposed Dispensation

6. At a meeting where a DPI or other significant interest arises, an Elected Member must declare it at that meeting. This is in addition to declaring it and registering it in the Council's Register of Member Interests.
7. Where an Elected Member has a significant interest that Elected Member can only make such representations at a meeting of the Council that a member of the public can make. Their interest would be noted and the Elected Member can continue to take part in the meeting to the extent that a member of the public would be able to

participate.

8. Councillor David Coupe has been appointed as a Director by Border to Coast Pensions Partnership Limited (“the Company”). By way of background the Company is owned by the administering authorities of eleven local government pension funds and was established to provide collective investment across those funds.
9. The role is remunerated by the Company and at present directors fulfilling the “shareholder director” role are paid £15,000 per annum by the Company. This salary has been determined by the Company’s remuneration committee and has the approval of all of the Partner Funds in the pension pool (and the respective shareholders).
10. It is expected that Councillor Coupe in carrying out the role will make a time commitment which is expected to be at least three days per month, with availability for meetings, induction and training as required. He is likely to sit on Board Committees as well as the main board and will be obliged to travel to the Company headquarters in Leeds for regular meetings.
11. The role is described as follows:
 - Support the Chair and Executive Team in instilling the appropriate culture, values and behaviours in the boardroom and beyond.
 - Provide independent oversight and scrutiny of Border to Coast including:
 - Provide an impartial and independent view of Border to Coast and its operations, removed from the day-to-day running of the business
 - Oversee the performance of the Board and Executive Team in meeting strategic objectives, including monitoring financial controls and risk management systems.
 - Draw on wider experience, in other organisations, to provide the Board and Border to Coast Executive Team with a breadth of understanding and insight, including:
 - Challenge and contribute to the development of the strategy of Border to Coast
 - Support the development of a suitable succession plan for the Board and CEO
 - Use specialist knowledge to input to decision making processes
 - Promote a culture of responsible investment and stewardship throughout the organisation.
 - Commit to building a full understanding of Border to Coast, especially in those areas of the business with a significant level of risk.
 - Take time to understand various stakeholder needs and ensure these are addressed at Board level.
12. In order to meet the above requirement, the Company wishes to have representation

of its shareholders on its Board and requests the Joint Committee with oversight of the Company to nominate potential candidates for this role. There are two directors nominated by the shareholder funds on two-year appointments, one of which expires each year. It is to this role that Councillor David Coupe has been appointed. The term of office for a shareholder director is currently under review and it looks likely that it will be increased from two to three years,

13. By assuming that role as a paid director Councillor David Coupe has a DPI.
14. Councillor David Coupe has made a request for a dispensation in order to allow him to continue to participate as a member of the Pension Fund Committee.
15. In order to provide clarity and certainty Leading Counsel's advice has been sought on behalf of the Joint Committee, which oversees the Company in respect of the legality of the granting of a dispensation and what that dispensation might cover. A copy of the advice is attached at Appendix 1.
16. In considering the request for a dispensation Standards Committee is asked to have regard to the following:
 - a) The appointment of shareholder directors has been accepted by the Joint Committee at the request of the Company as being advantageous to the operation of the Company. It is on the Council's interest that the Company should operate as effectively as possible and it is considered that the "shareholder directors" have an important role in maintaining the ethos and operation of the Company as a key provider of investment services to the collective Border to Coast Local Government Pension Fund Schemes.
 - b) The nomination of Directors from the Joint Committee necessarily draws on a small pool of Elected Members who have appropriate experience of the Local Government Pension Fund scheme. To draw from a wider pool would not necessarily provide the knowledge and experience valued by the Company.
 - c) The close alignment of the Partner Funds as Shareholders with the Company should promote public confidence in the Company and does provide reassurance to those shareholder Administering Authorities.
 - d) There is not considered to be any personal benefit, save for the payment of an allowance, to the Elected Member concerned. The involvement of shareholder directors in the main Board of the Company is considered to provide a public benefit.
 - e) The participation of Councillor David Coupe in discussion at Teesside Pension Fund Committee meetings is considered to be beneficial to informing that debate. His experiences as a member of the Board of the Company will inform debate. In any event, as one of a committee of 15, a single vote should not be decisive.
17. It is noted that participation in the Board meetings of the Company will not involve the Member in making any direct investment decision or decision as to the selection of an investment manager as these are executive functions of the Company and are carried out in accordance with its internal processes (including where appropriate

compliance with relevant procurement regulations).

What decision(s) are being recommended?

18. That the Standards Committee determine the following:
- a) Whether the dispensation is required;
 - b) Whether to grant the dispensation and the terms of the dispensation;
 - c) Whether the dispensation should extend to voting as well as participation in debate; and
 - d) The length of time the dispensations should operate for.

It is proposed that a dispensation be granted as follows:

For a period of three years (or for so long as Councillor David Coupe is a Director of the Company) whichever is the shorter that:

- (a) Councillor David Coupe should be allowed to participate, or participate further, in any discussion of any matter concerning the Company at the meetings of the Pensions Committee; and/or
- (b) Participate in any vote, or further vote, taken on the matter at the said meeting(s). PROVIDED THAT he shall not participate in any discussion or vote where changes to the remuneration of Directors of the Company are discussed.

Rationale for the recommended decision(s)

- 19, If Councillor Coupe is to become a member of the Board, he should be allowed to participate in the business of the Board.

Other potential decision(s) and why these have not been recommended

20. Refuse the request for a dispensation. This would prevent Councillor Coupe from being a member of the Board.

Impact(s) of the recommended decision(s)

Legal

21. Section 33 of the Localism Act 2011 provides that Dispensations can be granted in respect of Disclosable Pecuniary Interests (“DPs”).

Section 33 (1) requires that an Elected Member must make a written request for a dispensation.

Section 33 (3) provides that a dispensation must specify the period for which it has effect and that period may not exceed 4 years.

The consideration of whether to grant a dispensation under s33 is delegated to the Standards Committee.

Strategic priorities and risks

22. This decision will have a positive impact and support good governance.

Human Rights, Equality and Data Protection

23. The subject of this report is not a policy, strategy, function or service that is new or being revised. It is considered that an equality impact assessment is not required.

Financial

24. There are no financial implications or impact on any budgets or the Medium-Term Financial Plan (MTFP) arising from the content of this report.

Actions to be taken to implement the recommended decision(s)

Action	Responsible Officer	Deadline
Grant the Dispensation	Monitoring Officer	10 October 2022

Appendices

1	Copy of Leading Counsel's advice in respect of the legality of the granting of a dispensation and what that dispensation might cover
2	
3	

Background papers

Body	Report title	Date
Opinion of James Goudie QC originally delivered to the Border to Coast Pensions Partnership Joint Committee		

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