



Constitution and Standards Committee

30th September 2020

SUBJECT:	REQUEST FOR DISPENSATION - DISCLOSABLE PECUMIARY INTEREST AND/OR PREJUDICIAL INTEREST UNDER THE MEMBERS CODE OF CONDUCT
REPORT OF:	MONITORING OFFICER

REPORT SUMMARY

This report presents to the Constitution and Standards Committee a request for a dispensation for Members in respect of an Interest under the Members Code of Conduct in relation to the National Health Service (NHS) and the proposed Integrated Care System (ICS).

RECOMMENDATION

The Constitution & Standards Committee is recommended to grant a dispensation under the Members Code of Conduct:

- (a) to all Members in respect of matters concerning the management, organisation or finances of the National Health Service (NHS) and its constituent bodies, partnerships and trusts and as they may relate to the Integrated Care System (ICS);
- (b) excluding where the item of business directly relates to a specified contract or commissioning of services that may affect the financial wellbeing of the individual concerned;
- (c) for a period of three years; and
- (d) requiring that Members with a disclosable pecuniary interest or other prejudicial interest in these matters disclose that fact at the relevant meeting but explain that they may take part in any discussion, vote on the matter and remain in the room due to holding this dispensation.

SUPPORTING INFORMATION

1.0 REASONS FOR RECOMMENDATION

- 1.1 The Constitution and Standards Committee is charged under the Council's Constitution with determining applications for the grant of a dispensation to a Councillor who has a Disclosable Pecuniary Interest to enable them to participate in any discussion of a matter at a meeting and/or to participate in any vote on the matter.
- 1.2 It is considered that, whilst there is a conflict of interest held by many Members in relation to items of the Council's business concerning the National Health Service (NHS) and the Integrated Care System (ICS), the granting of a dispensation is warranted on the basis:
- (a) that there would otherwise be so many Members prohibited from participating in matters related to the NHS and the ICS that it would be likely that either or both:
 - (i) the transaction of that business by a Committee, Sub-Committee or other meeting or event would be impeded; and
 - (ii) the representation of different political groups on the Council, Committee or other body transacting that business would be so upset as to alter the likely outcome of any vote relating to that business;
 - (b) of the limited nexus of any councillor's interest, in that the considerations before the Council concerning the NHS and the ICS are of such a large scale and so encompassing that any personal interest of a Member of the Council is unlikely to have a meaningful impact on the decisions of Ministers, NHS leaders or the wider Council in their dealings with any matter related the management and finances of NHS employers; and
 - (c) that any bias introduced by a personal benefit to a Member of the Council related to the NHS and the organisation of the ICS will, therefore, be outweighed by the extent of the public benefit obtained by their contribution as a councillor in the interests of persons living in the authority's area.
- 1.3 A period of three years covers the time for the ICS framework to be passed into law, to be implemented as of April 2022 and for governance and contractual arrangements to be introduced and then negotiated.
- 1.4 A dispensation should not extend to those items of business that concern a particular contract that is likely to have a direct effect on an individual Member's financial wellbeing.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 The Constitution and Standards Committee has the option to agree to grant a dispensation or not to grant a dispensation. A dispensation may allow the Councillor:
- (a) to participate, or participate further, in any discussion of the matter at the meetings(s); and/or
 - (b) to participate in any vote, or further vote, taken on the matter at the meeting(s)
- 2.2 The Committee may apply a different period for the dispensation to apply up to a legal maximum of four years.
- The period of three years is an on balance recommendation based upon an estimate for the ICS to come to maturity as a suite of governance and financial arrangements to be entered into, commented upon or scrutinised by the Council. The Committee may, rather, choose to apply a dispensation for 12 or 18 months and request its review before considering renewal in existing or amended form.
- 2.3 The subject matter and effect of the dispensation may therefore be altered, including reducing from the breadth of the dispensation applied for or proposed to just those matters concerning the ICS.
- This is not recommended because the development and implementation of the ICS will become central to all matters concerning the NHS and it may become difficult for individuals and the Council alike to be able to disaggregate the two. In addition, the application is worded in respect of all matters concerning the NHS.
- 2.4 The Committee may apply other exclusions to the dispensation other than the one recommended.
- A number of situations can arise where a Member may feel a conflict of interest raises ethical or legal issues. These are not codified and the recommendation leaves this matter to the conscience of the individual Member and obtain advice where they feel it necessary. The Committee may, however, choose to exclude certain examples from the dispensation and require a Member to comply with the normal rules. A possible example highlighted in the report is of a Member who is a decision-making member of a trust or body of the NHS that is in direct negotiations with the Council over shared funding or expenditure.
- 2.5 The Committee may choose to grant a dispensation only as individual cases are put forward instead of the generic dispensation recommended.
- This is not recommended as would apply a potentially unnecessary administrative burden

3.0 BACKGROUND

3.1 Members' Interests

- 3.1.1 The Localism Act 2011 and the Members Code of Conduct provide that where a matter arises at a meeting which directly relates to a Disclosable Pecuniary Interests (as set out in Table 1), the Member must disclose the interest, not participate in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation.
- 3.1.2 The Code of Conduct at Appendix A goes on to describe the actions required of a Member in respect of a personal and prejudicial interest relating to other registrable interests or non-registerable interests.
- 3.1.3 A Member may be found to have committed a criminal offence if they fail to register a Disclosable Pecuniary Interest or to speak and/or vote where they have a Disclosable Pecuniary Interest, unless they have obtained a dispensation relieving the Member from either or both of the restrictions. A Member may be found to have breach of the Code of Conduct if there has been a failure to abide by the other requirements of the Code.
- 3.1.4 The Localism Act 2011 permits the Council to grant a dispensation relieving a Member from the restrictions imposed in respect of an disclosable pecuniary interest, and thus applied any other personal and prejudicial interest where the authority, after having had regard to all relevant circumstances:
- (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) [leader/mayor and cabinet executive model]; or
 - (e) considers that it is otherwise appropriate to grant a dispensation.
- 3.1.5 In reaching a decision on a request for a dispensation on the grounds that it "would be otherwise appropriate" factors which might be taken into account may include:
- (a) the nature of the councillor's interest;
 - (b) the extent to which there is some personal benefit and the extent of the public benefit obtained by agreeing to a dispensation;
 - (c) the need to maintain public confidence in the conduct of the council's business; or
 - (d) any other relevant circumstances.

- 3.1.6 A written request is required for a dispensation explaining why it is desirable and appropriate to grant the dispensation. Until such a dispensation is granted a Councillor may not participate in the consideration of the matter before the Council (or any Committee or Sub-Committee).
- 3.1.7 Any Councillor who has been granted a dispensation must declare the nature and existence of the interest and the dispensation before the commencement of any business to which it relates. A copy of the dispensation will be kept with the Register of Members' Interests

3.2 Conflicts of Interest, the NHS and ICS

- 3.2.1 The National Health Service is made up of a network of commissioners and providers, each established as a separate NHS body or NHS trust. That has created a number of questions for those Members who are employed or whose spouses, close friends and family are employed within the NHS. Until now, those questions have been looked at on a case by case basis and dealt with through the Register of Members' Interests and through the disclosure of interests as items of business came up at Council or committees. The most obvious example of this on scale was the full Council debate on NHS pay.
- 3.2.2 The Health and Care Bill going through Parliament at the moment affects all elements of the NHS and involves and seeks to integrate various elements of the Council's functions across social care, health and the wider public health agenda that is related to all of the local authority's systems. As such, the prospect of those Members directly and indirectly having an interest in NHS matters is increased several fold.
- 3.2.3 What are integrated care systems?

The NHS describes integrated care systems as

“Integrated care is about giving people the support they need, joined up across local councils, the NHS, and other partners. It removes traditional divisions between hospitals and family doctors, between physical and mental health, and between NHS and council services. In the past, these divisions have meant that too many people experienced disjointed care.

“Integrated care systems (ICSs) are new partnerships between the organisations that meet health and care needs across an area, to coordinate services and to plan in a way that improves population health and reduces inequalities between different groups.”

Source NHS England / Integrated Care

- 3.2.4 How ICSs work

Integrated Care Systems are made up of a single footprint, in this case Cheshire and Merseyside, organised into an Integrated Care Board (ICB) and an Integrated Care Partnership (ICP). The BMA helpfully summarises how this is intended to work in the following way

“ICSs work on three key levels.

System

Work is focused on partners working together to set strategy, finance, workforce planning, and agree overall levels of integration.

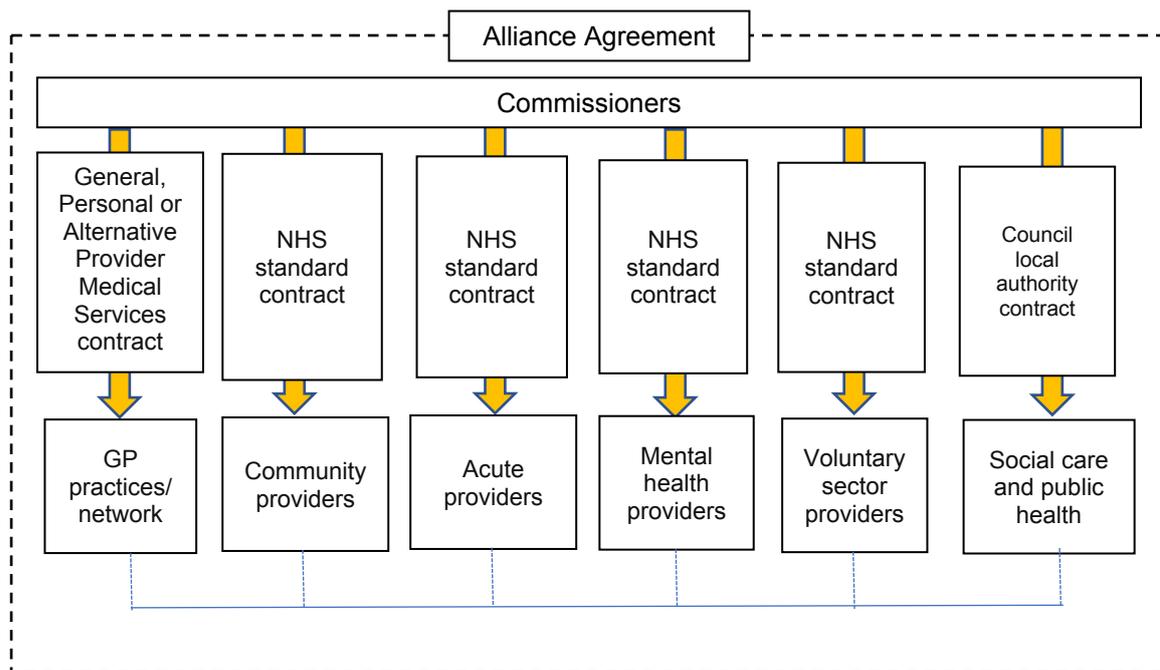
Place

Normally based around towns within a system. Work at ‘place’ level centres on the planning of localised services and secondary and community care.

Neighbourhood

This level is based around PCNs (primary care networks), groups of GP practices covering populations of 30,000 to 50,000 people. Multi-disciplinary teams are central to PCNs, with clinicians and health professionals from a wide range of services working together.

The ICS Alliance Agreement



ICS Leaders also take on responsibility for the financial and operational performance of the organisations within their system.

Source BMA / NHS Delivery and workforce / Integrated Care Systems

3.3 Written request for a Dispensation

3.3.1 Cllr Camphor has now formally written to the authority to request a dispensation in relation to items of business to be transacted by the Council concerning the National Health Service. Within this he states that:

“As a GP for the last 30 years working in Wirral I believe my experience as a GP and as Medical Secretary of a Local Medical Committee can be of considerable benefit to the committee’s I have been honoured to serve on in the Council and do believe that it can contribute to improving health care for the residents of my Ward and the wider population of Wirral.”

3.3.2 It is noted that Cllr Camphor also has on his Register of Interests that:

- Cllr Camphor holds a seat on the general practitioners committee (GPC) for both UK and England as part of the British Medical Association through a regional election for the region of Cheshire/Mid Mersey.

This membership is a registerable interest as the BMA is a trade union, one of whose principal purposes includes the influence of public opinion or policy

- Cllr Camphor’s spouse is employed by a primary care NHS practice. This is also a disclosable pecuniary interest.

3.3.3 It is noted that this situation is not unusual and that dispensations have been made elsewhere at Stoke on Trent City Council was cited as an example in the application.

3.3.4 Cllr Camphor’s interests and application for dispensation also provided the opportunity to widen out the application for dispensation and consider it in relation to all Members who may be similarly affected as referred to in paragraph 3.2.1 above.

3.4 Relevant Guidance

3.4.1 The Council has specific statutory powers and duties concerning holding NHS bodies to account, currently exercised by the Partnerships Committee as the Council’s overview and scrutiny, which include powers to demand information and make reports to NHS bodies and the particular function in being able to make a formal referral to the Secretary of State for Health. These are set out in The Local Authority (Public Health, Health and wellbeing boards and Health Scrutiny) Regulations 2013, for which the Department of Health issued an accompanying publication, “Local Authority Health Scrutiny: Guidance to support Local Authorities and their partners to deliver effective health scrutiny” to which the local authority must have regard.

3.4.2 The 2014 Guidance states at ‘Conflicts of interest’ as follows:

“3.1.24 Councils should take steps to avoid any conflict of interest arising from councillors’ involvement in the bodies or decisions that they are scrutinising. A conflict might arise where, for example, a councillor who was a full voting member of a health and wellbeing board was also a member of the same council’s health scrutiny committee or of a joint health scrutiny committee that might be scrutinising matters pertaining to the work of the health and wellbeing board.

“3.1.25 Conflicts of interest may also arise if councillors carrying out health scrutiny are, for example:

- An employee of an NHS body.
- A member or non-executive director of an NHS body.
- An executive member of another local authority.
- An employee or board member of an organisation commissioned by an NHS body or local authority to provide services.

“3.1.26 These councillors are not excluded from membership of overview and scrutiny committees, and, clearly, where the full council has retained the health scrutiny function, they will be involved in health scrutiny. However they will need to follow the rules and requirements governing the existence of interests in matters considered at meetings. Where such a risk is identified, they should consult their monitoring officer for advice on their involvement”

3.5 Considerations

3.5.1 It is the view of the Monitoring Officer that, whilst there is a conflict of interest as described above, the granting of a dispensation is warranted on the basis that:

- (a) that there would otherwise be so many Members prohibited from participating in matters related to the NHS and the ICS that it would be likely that either or both:
 - (i) the transaction of that business by a Committee, Sub-Committee or other meeting or event would be impeded; and
 - (ii) the representation of different political groups on the Council, Committee or other body transacting that business would be so upset as to alter the likely outcome of any vote relating to that business;
- (b) of the limited nexus of any councillor’s interest, in that the considerations before the Council concerning the NHS and the ICS are of such a large scale and so encompassing that any personal interest of a Member of the Council is unlikely to have a meaningful impact on the decisions of Ministers, NHS leaders or the wider Council in their dealings with any matter related the management and finances of NHS employers; and
- (c) that any bias introduced by a personal benefit to a Member of the Council related to the NHS and the organisation of the ICS will be outweighed by the extent of the public benefit obtained by their contribution as a councillor in the interests of persons living in the authority’s area.

3.5.2 A dispensation may be granted for a specific meeting or for a period of time up to four years or maybe subject to a specific condition, for example,

notification of any material change in circumstances arising from the dispensation. A period of three years would cover an estimated period for the ICS to come to maturity as a suite of governance and financial arrangements to be entered into, commented upon or scrutinised by the Council. A reasonable alternative would be to apply a dispensation for 12 or 18 months and request its review before considering renewal in existing or amended form

- 3.5.3 It would be possible to respond to the application in limiting the dispensation requested in relation to the NHS by granting a dispensation to matters of the ICS only. The ICS as proposed within the Bill and summarised above, however, is an all encompassing and fundamental change to the NHS management, organisation and finances such that it would be very difficult to disaggregate the two as subject areas.
- 3.5.4 The purpose of the Code of Conduct and the DPI or other interests regime is to apply the concepts of common law on decision making and bias to the individual. The Code both seeks to explain these concepts but also hold the individual to account. If granted, despite being able to rely on it, a Member may nonetheless choose on individual matters to not to take advantage of their dispensation if they believed that was the right course of action in the circumstances. Those reasons may be ethical or legal. Members would be encouraged to seek advice where they or officers feel that the common law position of bias might, despite the dispensation, still put the decision of the Council or of the NHS body at risk of legal challenge. There may be a number of such occasions, one example being where a Member is a decision-making member of a trust or body of the NHS that is in direct negotiations with the Council over shared funding or expenditure and the Member feels that the two are in direct conflict with one another.
- 3.5.5 At the heart of both the Code and the common law on bias, however, is the principle that, as public decision-makers, decisions must be made in the public interest and not to serve private interests. For that reason, it is considered that, whilst the dispensation should apply to the wider questions of management, organisation and finances of the NHS and of the ICS, it should not apply where any decision of the Council would have a direct and tangible effect on the financial position of themselves or their friends, family or business associates, including their or their practices' financial position.
- 3.5.6 For the purposes of openness and transparency where an interest arises under the Code, Members who have been granted a dispensation should be required to disclose that fact at the relevant meeting but explain that they have a dispensation to speak and vote on the matter concerned.

4.0 FINANCIAL IMPLICATIONS

- 4.1 There are no financial implications arising from this report

5.0 LEGAL IMPLICATIONS

5.1 The legislative provisions relating to Disclosable Pecuniary Interests and the ability of the Council to grant dispensations are detailed within this report at paragraphs 3.1 above and concern the Localism Act 2011.

5.2 Other legal implications are contained within the body of the report.

6.0 RESOURCE IMPLICATIONS

6.1 There are no such issues arising from this report.

7.0 RELEVANT RISKS

7.1 If a Councillor participates in a meeting where he/she has a Disclosable Pecuniary Interest and he/she does not have a dispensation, they may be committing a criminal offence under s34 Localism Act 2011.

8.0 ENAGEMENT/CONSULTATION

8.1 The decision whether or not to grant a dispensation is a matter for the Constitution and Standards Committee and therefore no wider consultation has taken place.

8.2 Discussions between Cllr Camphor and other Members with the monitoring officer and deputy monitoring officer has taken place. This has included reference to similar situations elsewhere where dispensations have been given in these circumstances and the position of the BMA in these matters.

9.0 EQUALITIES IMPLICATIONS

9.1 There are no specific equality implications arising from this report.

10.0 ENVIRONMENT & CLIMATE IMPLICATIONS

10.1 There are no specific environmental and climate issues arising from this report.

11.0 COMMUNITY WEALTH BUILDING

11.1 There are no direct Community Wealth Building implications arising from the report.

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BACKGROUND PAPERS

Member's application for dispensation

The Members' Code of Conduct

Register of Members' Interests and minuted recent disclosures of interests

Published materials cited