

Disclosable pecuniary interests – the facts

What is a disclosable pecuniary interest?

A disclosable pecuniary interest (DPI) is a category of interest which a member must register where they and/or their partner have such an interest. The categories are set out in regulations. Where a member has a DPI in any matter under discussion at a council meeting, they cannot take part in the discussion or vote.

Are there any exceptions to the need to register a DPI?

If a member has a DPI which is categorised as a 'sensitive interest' they do not have to put it on the register, if the monitoring officer agrees it is a 'sensitive interest'. A sensitive interest is one which, if disclosed, may put the member or their family at risk of harm.

Are there any exceptions to the need to withdraw from a meeting when a member has a DPI in the matter under discussion?

A member can apply in writing for a dispensation from the council to participate in a meeting where they have a DPI. It is up to the council, however, to decide whether to grant the DPI and they can only do so if one or more of the conditions for granting a dispensation set out in the legislation are met.

Does a member with a DPI have to withdraw from the room when the matter is under discussion or can they simply go and sit in the public gallery?

That is a matter for local choice. The Localism Act gives councils the power to make standing orders requiring full withdrawal but it is not mandatory.

What happens if a member fails to register a DPI of which they are aware or fails to withdraw from the meeting when a DPI arises?

Under the Localism Act, it is a criminal offence to fail to register a DPI or to withdraw when a relevant matter crops up in a meeting where the member knows they have a DPI unless they have been given a dispensation.

Does the member have to say what their interest is when they withdraw?

A member does not by law have to say what their DPI is before withdrawing provided the DPI has already been registered. Where it has not yet been registered the member must declare the nature of the interest and ask for it to be registered by the monitoring officer unless it is a 'sensitive interest'.

However, the council can make its own procedures requiring the member to state the nature of the interest and good practice would dictate that the member should formally declare the interest before withdrawing. This both allows the DPI to be formally recorded for avoidance of doubt and allows any public present to understand why the member is not participating.

Are there circumstances where the member with a DPI can address the meeting before withdrawing, for example to advocate on behalf of their planning application?

The only legally certain way this can be done is by giving the member a dispensation.

However, there is some ambiguity in the wording of the legislation. The legislation says that a member with a DPI must not participate in discussion or vote at the meeting. There is an argument that says that any opportunity for the public to address the meeting at the start of an item of business does not constitute formal discussion at the meeting and hence a councillor could address the meeting as a member of the public but then withdraw once the council starts discussing the item. However, the Government's guidance explicitly rules this out as an option (although it is not statutory guidance).

What does 'having a disclosable pecuniary interest in any matter' mean?

The wording of the legislation is unclear as to when the matter under discussion gives rise to a DPI. However, the Government's interpretation in their own published guidance is that the matter under discussion must somehow relate to the DPI, rather than merely affecting it. For example, under that interpretation a planning application for the member's registered address directly relates to that registered interest and hence would give rise to a DPI. A planning application in the vicinity of that registered address may affect the councillor's property but doesn't directly relate to it and hence there would be no DPI.

So can a member take part in a discussion about their neighbour's planning application?

Under the Government's interpretation a member doesn't have a DPI in their neighbour's planning application as the matter being considered does not relate to one of their DPIs. However, that type of interest may be captured by other provisions in a council's local code as it clearly affects the member and their property. The ability of a member to discuss and vote on a neighbouring planning application would also likely be a breach of the Principles of Public Life which have to underpin any local code.

Do members have a disclosable pecuniary interest in setting the authority's council tax or precept?

Decisions on setting a council tax or precept clearly affect property owners in the area. Having property is a registerable DPI. However, under the Government guidance the matter, while it may affect the property, doesn't actually 'relate to it'. Hence, under the Government's interpretation of the legislation there is no DPI.

That would similarly apply for major developments in the area where a councillor's property is affected but to no greater extent than other people.

What types of interests should be captured in local codes beyond disclosable pecuniary interests set out in the regulations?

This is a matter for local authorities themselves to determine. However, in doing so they should consider the public interest in allowing members to participate and vote on certain issues, as well as bearing in mind the Principles of Public Life which relate to integrity of decision making and impartiality.

Examples of other types of interests to be considered are matters which directly affect the interests of the councillor or his or her partner above and beyond most people affected in the area, even if they don't directly relate to that interest; and matters which similarly relate to or affect the financial interests of other family members, friends or business associates.

Any such interests would not be DPIs and hence would not give rise to a criminal offence but would be dealt with through local administrative procedures.

When including these other interests in a Code, consideration should also be given as to whether the member merely has to declare the interest, has to declare it but can speak before withdrawing or, once the interest has been declared, take no part at all in the discussion or vote.

Such interests would not be registered – as it would be onerous and impractical, for example, to have to register all the interests of your friends and family on the off-chance that council business may somehow touch upon them – so the rules should make clear that the member should declare the nature of the interest when it arises.

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