

Agenda Item No. 6

TO: STANDARDS COMMITTEE
DATE: 17 NOVEMBER 2009
SUBJECT: DISPENSATIONS FROM THE CODE OF CONDUCT
BY: MONITORING OFFICER
Classification: Unrestricted

Summary: This report summarises recent guidance from the Standards Board for England on dispensations.

Implications: Human Resources Implications: None

Finance Implications: None

Legal Implications:

Crime & Disorder Implications (Section 17): None

Equalities & Diversity Implications: None

Sustainability Implications: None

Risk and Health and Safety Implications: None

Corporate Plan Implications: None

Decision Required: **That each application is considered separately and that if suitable individual dispensation is granted to the applicant**

Introduction/Background

The Standards Committee (Further Provision)(England) Regulations 2009 came into effect on the 15 June, clarifying the grounds on which dispensations to members may be granted. On 3 July 2009 the Standards Board for England issued formal guidance on this issue for the first time. A copy of the Board's Guidance is attached as Appendix 1.

The Committee will be aware some provisions in the Code of Conduct for Members require members not to participate in decision-making in certain circumstances. In particular, where a member has a personal interest that is also a prejudicial interest in a matter being discussed at a meeting, he must not only declare that interest, but must also leave the room (unless members of the public are allowed to make representations, give evidence or answer questions about the matter, by statutory right or otherwise, in which case the member can attend the meeting for that purpose, but must leave having spoken). A personal interest under the Code is any interest which must be registered, or any interest "where the well-being or financial position of you, members of your family, or people with whom you have a close association, is likely to be affected by the business of your authority more than it would affect" the majority of the inhabitants of the ward affected by the decision. A prejudicial interest is a personal interest which

- (a) does not fall into one of the exempt categories;

- (b) affects the member's financial interests or relates to a licensing or regulatory matter; and
- (c) is one which a member of the public, who knows the relevant facts, would reasonably think is so significant that it is likely to affect the member's judgement of the public interest.

The definition of personal interest is broad, and occasions can arise where so many members would have an interest in a matter under discussion that the transaction of the Council's business would be impeded. In such cases there is scope for a dispensation to be granted, so that participation at a meeting which would otherwise constitute a breach of the Code is permitted.

The Legal Position

The Relevant Authorities (Standards Committee)(Dispensations) Regulations 2002 were revoked with effect from 15 June 2009, and replaced with provisions contained in Regulations 17 to 19 of The Standards Committee (Further Provision) (England) Regulations 2009. The 2009 Regulations provide that a Standards Committee may grant a dispensation in the following circumstances:-

- (a) where the transaction of business of the authority would, but for the grant of any other dispensation in relation to that business, on each occasion on which the dispensation would apply, otherwise be impeded by, or as a result of the mandatory provisions [ie the Code of Conduct] because –
 - (i) the number of members of the authority prohibited from voting on the business of the authority at a meeting exceeds 50% of those members that, but for the granting of any dispensations relating to that business, would otherwise be entitled to vote on that business; or
 - (ii) the number of members prohibited from voting on the business of the authority at a meeting would, but for the granting of any dispensations relating to that business, upset the political balance of that meeting to such an extent as to prejudice the outcome of voting in that meeting;
- (b) the member has submitted to the standards committee a written request for a dispensation explaining why it is desirable; and
- (c) the standards committee concludes that having regard to the matters mentioned in sub-paragraph (a) above, the written request made pursuant to sub-paragraph (b) above, and to any other relevant circumstances of the case, it is appropriate to grant the dispensation.

The effect of the changes effected by the 2009 Regulations is that it is now clear that when considering whether more than 50% of members are disqualified from voting one considers the members "at a meeting", not all members of the Council, and that the second test is satisfied if, at a meeting, the number of members disqualified from voting would upset the political balance "to such an extent as to prejudice the outcome of voting".

There are exceptions to the power to give dispensations, which are the same now as under the 2002 Regulations. Members cannot be given dispensations to allow them to vote on policy and scrutiny committees about decisions made by any body they were a member of at the time the decision was taken. And a dispensation cannot be given to

allow a Cabinet member with a prejudicial interest in a matter to take an executive decision about it on their own.

The Standards Board for England Guidance

On the 3 July the Standards Board issued formal guidance on dispensations. That Guidance is attached as Appendix 1. This is the first time the Board has given guidance on this subject.

It is clear from the guidance that the fact that an application meets the legal criteria for grant does not mean that the application should be automatically granted. It must follow that in such a case the matter in relation to which the dispensation is sought would have to be determined without the participation of the members in question. In a case where the matter is to be decided by a Committee which must be politically balanced this will present a problem if all the members of one party are disqualified. It is suggested therefore that whether the decision in question could be taken by other means, and if so how, should be a consideration to be taken into account when considering whether a dispensation is granted.

Issue for decision

The need for dispensation has arisen where a planning application has been submitted by the Leader of the Majority Group on the Council. When such an application is made it will normally need to be determined at member level rather than by officers – officers do not have the delegated power to determine a planning application submitted by or on behalf of a member of the Council (so that such applications are determined at a public meeting). Members of the Majority Party usually regard themselves as a “close associate” of fellow members – consistent with guidance from the Standards Board which advises that any person with whom you are in either regular or irregular contact over a period of time and who is more than an acquaintance is a close associate – and therefore as having a personal interest in such an application. It is usually considered, applying a proper degree of caution, that such an interest may be a prejudicial one, since none of the exemptions apply, it is a matter related to a regulatory function, and a reasonable member of the public in possession of all the facts, may consider that a member’s judgment of the public interest may be affected if the interests of a close associate are at stake.

To date the following members have applied for a dispensation; Cllrs Barnicott; Bobbin; Mulhern; Stokes.

Options

Dispensation is not granted - Officers do not have delegated powers to deal with applications by members and these matters have to be dealt with by Committee. The planning committee requires 6 members to be present for a quorum. There are 17 members of the planning committee, 11 conservatives, 4 labour, 1 liberal democrat and 1 independent. If no members of the majority party are able to participate in deciding the application it is dependant on all of the other members of the committee to attend for a quorum to be achieved. The political balance of the Committee would be affected.

The application originally was to be considered at the planning committee on the 5 November 2009 but all the majority party declared a prejudicial interest and the independent member sent her apologies but her substitute was unable to attend and also sent his apologies. The matter was unable to be heard.

It is not recommended that this course of action is followed.

Dispensation is granted – Members will be able to able to consider the application if a quorum of six is achieved.

It is recommended that this course of action is followed.

Recommendation

That each application is considered separately and that if suitable individual dispensation is granted to the applicant

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Report approved by - Mark Radford

Date 9 November 2009

List of background documents - none