

**To: Members of the Standards Committee**

**Independent Members – Mr A Mackie (Chair),  
Mr T M Organ and Mr W J Ravenscroft and 1 Vacancy  
Councillors S Bland, C Fitzsimmons, B Maher, T  
McCarthy and J Walker  
Parish Council Members – Parish Councillors  
V Allen, M Banner and G Warburton**

Diana Terris  
Chief Executive  
Town Hall  
Sankey Street  
Warrington  
WA1 1UH

**2 November 2011**

**Standards Committee**

**Thursday, 10 November 2011 at 6.30pm**

**Council Chamber, Town Hall, Warrington**

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**AGENDA**

**Part 1**

Items open to members of the public (including the press) subject to any statutory right of exclusion.

- |  | <b>Page<br/>Number</b> |
|--|------------------------|
| <b>1. <u>Apologies for Absence</u></b>   |                        |
| To record any apologies for absence received   |                        |
| <b>2. <u>Code of Conduct – Declaration of Interests</u></b>  |                        |
| Members are reminded of their responsibility to declare any personal or prejudicial interest they have in any item of business on the agenda no later than when the item is reached. |                        |
| <b>3. <u>Minutes</u></b>   | <b>1</b>               |
| To confirm the Minutes of the meeting of the Committee held on 8 September 2011 as a correct record.   |                        |
| <b>4. <u>Granting of Dispensations to Councillors</u></b>  |                        |
| Report of Assistant Chief Executive  |                        |

## **5. Future of Standards – Code of Conduct**

A verbal update and discussion on the Localism Bill and the effects of this from a parish council perspective.

### **Part 2**

Items of a “confidential or other special nature” during which it is likely that the meeting will not be open to the public and press as there would be a disclosure of exempt information as defined in Section 100I of the Local Government Act 1972.

**Nil**

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## STANDARDS COMMITTEE

8 September 2011

Present: Mr A Mackie (Independent Chair)  
Independent Members – W Ravenscroft,  
Councillors – S Bland, B Maher, A McCarthy  
and J Walker, Parish Councillors – V Allen, M Banner

### **ST 8 Apologies for Absence**

Apologies for absence were received from Councillor C Fitzsimmons and Parish Councillor G Warburton.

### **ST 9 Code of Conduct**

There were no declarations of interest received.

### **ST 10 Minutes**

The Minutes of the meeting held on 7 July 2011 were agreed as a correct record and signed by the Chair (with an amendment to include apologies from Councillor C Fitzsimmons and Independent Member V Allen).

### **ST 11 Future of Standards – Parish Perspective**

The Committee received a verbal presentation from Jackie Weaver, Chief Officer, Cheshire Association of Local Councils'; the presentation was in relation to the new Localism Bill and the future of the standards regime from a Parish Council perspective.

It was reported that for Town and Parish Councils the key areas of concern arising from the Localism Bill;-

- the previous code of Conduct set out standards which protected Members from having to consider the wider legal framework
- public uncertainty – the public would not know whether their local Parish / Town Council had a Code and if so what it would be. This Code would be separate from disclosure of interest which again would be very confusing
- if a local code was to be agreed what sanctions were available
- by virtue of their size how would local Councils be able to retain objectivity and additionally fund their training needs
- there was still a requirement for the promotion and maintenance of high standards but not guidance on the application, this could lead to differing standards in different areas

It was suggested that Councils could adopt the Nolan Principles and enshrine them in their Standing Orders in lieu of their own code, but in any event all Councils would need to review their policies for dealing with complaints.

It was noted that the Lords had slightly different views; however none of these had been included in the committee stage. Their view included;-

- a code of conduct for Members for all local authorities should be mandatory, not voluntary
- the code of conduct for all local authorities should be uniformed to ensure there was no local diversity about what was appropriate conduct for all Councillors in all local authorities
- a nationally uniformed code of conduct did not have to be drafted by Government, it could be drafted by bodies or associations which represented local authorities
- uncertainty about the introduction of criminal offences for Councillors who fail to register and declare certain financial and other interests
- the continuation of independent Standards Committees (of principal authorities) to investigate and determine allegations about Councillors' conduct
- the need for a Councillor to have the right of appeal in respect of a decision concerning his / her conduct

Mrs Weaver was thanked for her presentation and views.

Decision – That Parish Council Clerks be invited to the next meeting of the Committee to discuss training, funding and future provision

Dated.....

Signed.....

# WARRINGTON BOROUGH COUNCIL

## STANDARDS COMMITTEE – 10<sup>th</sup> NOVEMBER 2011

**Report of the:** Assistant Chief Executive  
**Report Author:** Solicitor to the Council and Assistant Director Governance  
**Contact Details:** **Email Address:** tdate1@warrington.gov.uk **Telephone: 01925 442150**

**Ward Members:** N/A

**TITLE OF REPORT: REQUESTS FOR DISPENSATION – WARRINGTON  
BOROUGH COUNCIL MEETING MONDAY 12<sup>th</sup> DECEMBER  
2011**

### **1. PURPOSE**

- 1.1 At its forthcoming meeting on Monday 12<sup>th</sup> December 2011, the Council is to consider a report entitled “Review of Charges for Parish Council Elections”. At present, the costs of Parish elections fall to the Borough Council and the Council’s Returning Officer but legislation makes provision for the Council to recover those costs from the parishes involved.
- 1.2 The Council’s records show that as many as 40 of the current Borough Councillors are also members of individual parish councils within Warrington.
- 1.4 The Local Authorities (Model Code of Conduct) Order 2007 requires that any Council member with a “prejudicial interest” in any business of the Council must withdraw from the room or chamber where a meeting considering the business is being held. It is undoubtedly the case that those Borough Councillors who are also parish councillors have a prejudicial interest in the subject matter of the report in question. However, the Order enables the Standards Committee to grant those members with a prejudicial interest a dispensation to participate and vote upon any matter where such an interest exists.

### **2. CONFIDENTIAL OR EXEMPT**

- 2.1 This report is not confidential or exempt.

### **3. THE DISPENSATION PROCEDURE**

- 3.1 The manner in which the power to grant a dispensation may be exercised is set out in the Standards Committee (Further Provisions) (England) Regulations 2009

## Agenda Item 4

(‘the Regulations’). The relevant considerations are also set out in a guidance note published by Standards England which is attached to this report as appendix 1.

- 3.2 The most relevant provision of the regulations in this connection is that which states that Standards Committees can grant a dispensation if more than 50% of members have a prejudicial interest in an item of business to be discussed at a meeting which is covered by the Code of Conduct. This clearly includes meetings of the full Council.
- 3.3 Standards Committees can also grant a dispensation for an item of business if the political balance of the meeting could be upset enough to prejudice enough the outcome of the vote. In applying these criteria, it is absolutely clear that well in excess of 50% of the council’s membership has a prima facie prejudicial interest in the relevant item of business. It is also the case that the current political balance of the Council would be distorted if the 40 members in question were unable to participate. It is relevant for the Standards Committee to know that the quorum for consideration of matters at Council meetings is 19. It should be noted that it would not be possible for the Council to consider this matter if more than 38 of its Councillors were unable to participate in consideration of the item.

### **4. CONSIDERATIONS FOR DEALING WITH DISPENSATION REQUESTS**

- 4.1 Members of the Standards Committee will note from the introduction to the guidance document (appendix 1) that the guidance is not mandatory but has been written to help describe when Standards Committee can grant dispensations. The guidance invites Standards Committee to address five individual questions to assist them in dealing with such matters.
- 4.2 The first question to ask is whether the member’s interest is such that allowing him or her to participate would damage public confidence in the conduct of the authority’s business. In addressing this question, members are advised that it is unlikely that it would be appropriate to grant a dispensation to a member who has a prejudicial interest arising as a result of an effect on their personal financial position or that of a relative.

There is no evidence to suggest that the nature of the interest in this case would have any impact whatsoever upon an individual member’s financial position. The interest arises from the individual member’s membership of the individual parish council.

- 4.3 The next question to ask is whether the interest is common to the member and significant proportion of the general public.

## **Agenda Item 4**

It is suggested that it is difficult to regard the interest as being common to a significant proportion of the general public because membership of parish councils is confined to a very small proportion of the public at large.

- 4.4 The third question is whether participation of the member in the business is justified by the member's particular role or expertise.

The relevant consideration here will be the fact that members of parish councils will be particularly aware of the impact that any particular decision might have.

- 4.5 The final question is to ask whether the business that the interest relates to is about a voluntary organisation or a public body which is to be considered by an Overview and Scrutiny Committee. A further sub question is whether the member's interest is a financial one.

- 4.6 It is difficult to see how this question can be fully applied upon this occasion because the issue is not to be considered by an Overview and Scrutiny Committee. However, as indicated above, any interest that there may be is not one which would impact upon the individual's financial position.

### **5. PRACTICAL GUIDANCE**

- 5.1 As the guidance indicates a member must submit an application in writing explaining why dispensation is desirable. A letter has been sent to all members of the Council explaining the background to the matter and inviting those members to make a written request for dispensation. Any approaches made will be reported to the committee on 10<sup>th</sup> November 2011.

- 5.2 The Committee's decision should be based upon application of the criteria described in this report and also the specific questions identified. The Standards Committee has the discretion to decide the nature of any dispensation. For example, the Committee may consider that it is appropriate that the dispensation allows the member to speak and not vote, or to fully participate and vote. The Committee can also decide how long the dispensation should apply although it cannot be longer than 4 years. Standards for England has indicated that it would expect most dispensations to cover a specific item of business at one meeting of the Authority.

### **6. CONSULTATION**

- 6.1 No consultation has been undertaken upon this matter because the decision is, by virtue of statute, a matter entirely one for the Standards Committee.

### **7. FINANCIAL IMPLICATIONS**

- 7.1 There are no financial implications arising from this report.

**8. EQUALITY AND DIVERSITY / EQUALITY IMPACT ASSESSMENT**

8.1 There are no immediately apparent equality issues arising from this report.

**9. RISK ASSESSMENT**

9.1 Without appropriate dispensations being made the risk to the Council is that it would be unable to deal with a matter of significance given the large number of Councillors who are also Parish Councillors and the Council's own requirements in relation to a quorum.

9.2 The risk to the Standards Committee is a failure to apply the relevant law and guidance in coming to a decision. However the relevant statutory provisions and guidance have been identified in this report.

**10. REASON FOR RECOMMENDATION**

10.1 To enable the Standards Committee to discharge its statutory obligation to consider applications for dispensation.

**11. RECOMMENDATION**

11.1 To consider the applications for dispensations in accordance with the Standards Committee (Further Provisions) (England) Regulations 2009 and the guidance provided by Standards for England.

**12. BACKGROUND PAPERS**

12.1 None other than as identified in this report.

**Contacts for Background Papers:**

<b>Name</b>	<b>E-mail</b>	<b>Telephone</b>
Tim Date	tdate1@warrington.gov.uk	01925 442150

<b>Councillors who have requested a dispensation.</b>
Barr
Biggin
Bland (Keith)
Bland (Sue)
Bowden
Brinksman
Campbell
Davidson
Dirir
Earl
Fitzsimmons
Friend
Froggatt
Gleave
Higgins
Hoyle
Johnson
Jordan
Joyce
Keane
Ladbury
Maher
Marks
McCarthy
Nelson
O'Neill
Reynolds
Walker (Peter)
Welborn (Elaine)
Wood
Woodyatt
Wright (Pat)

<b>Not responded</b>
Axcell
Bennett
Bretherton
Carey
Dodd
Kerr-Brown
McLaughlin
Mundry
Patel
Roberts
Simcock
Wright (Steve)

<b>Don't want dispensation</b>
Smith (Liz)
Walker (Judith)

<b>Do not require dispensation</b>
Price
Carter
Richards
Parish
Settle
Hannon (Kate)
Hannon (Mike)
Welborn (Graham)
Rashid
Kennedy

TOTAL 56

# DISPENSATIONS



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# introduction

This guidance on dispensations is aimed at standards committees. It is not mandatory but has been written to help describe when standards committees can grant dispensations for members allowing them to speak and vote at a meeting when they have a prejudicial interest.

# dispensations

## Granting dispensations under the new regulations

The legislation states standards committees can grant dispensations for members allowing them to speak and vote at a meeting when they have a prejudicial interest. The criteria for granting these dispensations changed in June 2009

Concerns were raised by some authorities, as well as the Standards Board for England, about the provisions of previous dispensation regulations. Due to these concerns, the Standards Committee (Further Provisions) (England) Regulations 2009 (the regulations) revoke the previous regulations. They replace them with new provisions to clarify the grounds on which standards committees may grant dispensations to local authority members.

Under Section 54A(1) of the Local Government Act 2000 an authority's standards committee can set up a sub-committee to consider requests for dispensations. Any reference in this guidance to the standards committee includes any sub-committee which has this function.

Dispensations may be granted for speaking only, or for speaking and voting. The 2007 Code of Conduct (the Code) relaxed the provisions for restricting members from speaking. Therefore, the need to request a dispensation in this respect is now limited to circumstances where the public do not have the right to speak, or to where a parish or police authority has not adopted paragraph 12(2) of the Code.

Part 4 of the regulations sets out the

circumstances in which a standards committee can grant dispensations to members of relevant authorities in England, and police authorities in Wales. If a member acts in accordance with the granting of a dispensation, taking part in business otherwise prohibited by an authority's code of conduct would not result in a failure to comply with that code.

A standards committee may grant a dispensation to a member or co-opted member of an authority in the following circumstances:

- where more than 50% of the members who would be entitled to vote at a meeting are prohibited from voting **OR**
- where the number of members that are prohibited from voting at a meeting would upset the political balance of the meeting to the extent that the outcome of voting would be prejudiced.

**Note:** Although the Regulations are not explicit, political balance is a legal formula, set out in the Local Government and Housing Act 1989 and associated regulations. It applies only to relevant authorities and places an obligation on them to reflect the political balance of their elected members when determining who should sit on certain committees. It does not apply to parish councils.

Standards committees must ignore any dispensations that have already been given to others at the meeting to decide whether either of these criteria apply.

There are two **exceptions** to this:

- Members cannot be given a dispensation allowing them to vote in

# dispensations

overview and scrutiny committees about decisions made by any body they were a member of at the time the decision was taken.

- A dispensation cannot be given to allow an executive member with a prejudicial interest in an item of executive business to take an executive decision about it on their own.

The dispensation granted may apply to just one meeting or it may be applicable on an ongoing basis. However, the dispensation cannot be used to allow participation in the business of the authority if it was granted more than four years ago.

## Legal requirements for granting dispensations

- 1) Standards committees can grant a dispensation if more than 50% of members have a prejudicial interest in an item of business to be discussed at a meeting which is covered by their code of conduct. They must ignore any members who have already been granted dispensations when doing this (see paragraph [\*]). The list of meetings is set out in paragraph 1(4) of the Model Code of Conduct contained in the Local Authorities (Model Code of Conduct) Order 2007. These are meetings of:

- the authority
- its executive and its committees and sub-committees
- any other committees, sub-committees, joint committees, joint sub-committees or area committees of the authority.

- 2) Standards committees can grant a dispensation for an item of business if the political balance of a meeting would be upset enough to prejudice the outcome of the vote. They must ignore any members who have already been granted dispensations when doing this (see paragraph [\*]). This means that due to the number of members who are prevented from voting the political balance of the committee is changed. This is similar to a provision that has been in existence in Wales for some time. As before, this does not apply to parish councils as they are not bound by the political balance rules.

[\*]The requirement to ignore any members who have already been granted dispensations means that standards committees should disregard any previously granted dispensations in order to work out whether the two circumstances above apply.

So, if there were ten members on a committee, six of whom would not be able to vote on some business, all six can claim a dispensation. If previously granted dispensations were not disregarded, once two people had been granted dispensations, the remaining four would be ineligible because at that point 50% of the committee would be able to vote.

In addition it is necessary to consider if any of the exceptions set out above apply.

# dispensations

## Issues and criteria to consider when granting dispensations

The number of members in each political group on an authority could affect the eligibility to apply for a dispensation.

In situations where one political party has a large majority on an authority, and therefore on its committees, members of that political party will not be eligible to apply for a dispensation frequently under the criterion for political balance (see page 3). Where an authority has two or more political parties, and the number of members that each party has is fairly evenly balanced, the eligibility to apply for a dispensation will rise.

Clearly there is a difference between being eligible to apply for a dispensation and it being appropriate for that dispensation to be granted. We recommend that the standards committee considers the need for criteria to be applied to requests for dispensations. The committee will need to balance the prejudicial interest of the member seeking the dispensation to vote on an item of business, against the potential effect on the outcome of the vote if the member is unable to do so.

## Considerations for dealing with dispensation requests

**Q. Is the nature of the member's interest such that allowing them to participate would not damage public confidence in the conduct of the authority's business?**

For instance, it is unlikely that it would be appropriate to grant a dispensation

to a member who has a prejudicial interest arising as a result of an effect on their personal financial position or on that of a relative. The adverse public perception of the personal benefit to the member would probably outweigh any public interest in maintaining the political balance of the committee making the decision. This is especially where an authority has well-established processes for members on committees to be substituted by members from the same political party.

However, the prejudicial interest could arise from the financial effect the decision might have on a public body of which they are a member. In such cases, it is possible that any public interest in maintaining the political balance of the committee making the decision might be given greater prominence.

**Q. Is the interest common to the member and a significant proportion of the general public?**

For example, the member might be a pensioner who is considering an item of business about giving access to a local public facility at reduced rates for pensioners. Some cautious members might regard this as a possible prejudicial interest. However, as a significant proportion of the population in the area are also likely to be pensioners, it might be appropriate to grant a dispensation in these circumstances.

# dispensations

**Q. Is the participation of the member in the business that the interest relates to justified by the member's particular role or expertise?**

For instance, a member might represent the authority on another public body – such as a fire or police authority – and have particular expertise in the work of that body. Therefore it may be appropriate for that member to be allowed to address the decision-making body, even where there is no right for the public to do so. This would mean that the body would have the benefit of the member's expertise before making a decision which would benefit it financially.

**Q. Is the business that the interest relates to about a voluntary organisation or a public body which is to be considered by an overview and scrutiny committee? And is the member's interest not a financial one?**

In circumstances such as these, the standards committee might believe that it is in the interests of the authority's inhabitants to remove the incapacity from speaking or voting.

**Practical guidance on the process for granting dispensations and recording them**

The process for making requests for dispensations, the criteria that will be applied and the process that will be followed when the request is considered should all be clearly understood by those

concerned. Therefore, standards committees should set all this out and make it available to members.

A member must submit an application in writing explaining why a dispensation is desirable. Only the member can do this – they can't ask somebody else to do it on their behalf. It is sensible to send that application to the monitoring officer so that they can arrange for it to be considered by their standards committee.

A standards committee meeting must be convened to consider the application for a dispensation. Therefore, it is not possible to grant a dispensation as a matter of urgency to deal with emergency business.

The committee must consider the legal criteria set out on pages 3–4, including the exceptions. They must also consider any other relevant circumstances. These can include any local criteria they have adopted.

The committee will need to consider whether the member making the request will be allowed to make oral representations to the committee or whether the application will be dealt with only through written representations.

A standards committee has the discretion to decide the nature of any dispensation. For example, the committee may consider that it is appropriate that the dispensation allows the member to speak and not vote, or to fully participate and vote. The committee can also decide how long the dispensation should apply, although it cannot be longer than four years.

# dispensations

It is our view that the regulations do not allow standards committees to issue general dispensations to cover members for any situation where a prejudicial interest may arise. The regulations refer to circumstances that arise at “a meeting”. Therefore, we would expect most dispensations to cover a specific item of business at one meeting of the authority.

The decision must be recorded in writing and must be kept with the register of interests established and maintained under Section 81 (1) of the Local Government Act 2000.

Standards committees can refuse to grant a dispensation. The regulations allow for standards committees to use their discretion rather than impose an obligation for them to grant dispensations.