

STANDARDS COMMITTEE

28 January 2013

DISPENSATIONS

REPORT OF CORPORATE DIRECTOR (GOVERNANCE)

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RECENT REFERENCES:

ST92 – Dispensations – 30 January 2012

ST93 – Localism Act 2011 – New Code of Conduct – 6 September 2012

EXECUTIVE SUMMARY:

The report considers some common circumstances in which the need to grant dispensations to speak and vote will arise under the Localism Act 2011. It suggests a way forward in specific circumstances set out in the recommendations below, to avoid the need for each case to be referred to the Standards Committee.

RECOMMENDATIONS:

1. That the Corporate Director (Governance) be authorised to extend the interim dispensations in relation to other public offices, given to the Councillors named in paragraph 2.4 of the report, until the expiry of their current period of office as a District Councillor.

2. That the Corporate Director (Governance), in consultation with the Chairman, be authorised to grant dispensations in relation to disclosable pecuniary interests in respect of Council Tax setting and Council House tenancies.
3. That the Corporate Director (Governance), in consultation with the Chairman, be authorised to give dispensations to Members to speak and vote during the annual budget debate, either at Council or other meetings, in relation to personal and prejudicial interests affecting “not for profit” voluntary organisations and public bodies, provided that the dispensations would not extend to circumstances where the office on the outside body would give rise to a significant risk of a personal financial liability for the Member concerned.
4. That the Corporate Director (Governance), in consultation with the Chairman, be authorised to grant dispensations to deal with short term applications when:
 - 1) the number of Councillors affected is so great a proportion of the Council that it would impede business.
 - 2) it would upset the political balance of the Council to such an extent as to alter the likely outcome of the meeting.

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DETAIL:

1 Introduction

1.1 At its meeting held on 27 September 2012 the Council adopted its new Code of Conduct (Report ST93 refers).

1.2 Dispensations can be granted to allow a Member to participate and vote on a decision when:

(a) in the case of a disclosable pecuniary interest, it would otherwise be a criminal offence or

(b) in respect of a personal and prejudicial interest, it would otherwise be a breach of the Code of Conduct.

1.3 The categories for seeking a dispensation in relation to disclosable pecuniary interests are as follows:-

1) the number of Councillors affected is so great a proportion of the Council that it would impede business.

2) it would upset the political balance of the Council to such an extent as to alter the likely outcome of the meeting.

3) the dispensation would be in the interests of persons living in the area.

4) each Member of the Council's Cabinet would be prevented from participating in any particular business before Cabinet,

5) it is otherwise appropriate to grant a dispensation.

The Act does not specifically provide the mechanism for the consideration of personal and prejudicial interests under local codes – but using the same criteria would be a reasonable approach.

1.4 Specific examples of instances in which decisions need to be made on dispensations are set out below.

2 Dispensations – Other Public Offices

- 2.1 When Report ST93 was being considered by the Standards Committee, the meeting discussed the position of those Members who were either County Councillors or County Council employees and whether, for example, being a County Councillor was an ‘office....carried on for profit or gain’ and so could be interpreted as potentially being a disclosable personal interest. Bearing in mind that the County Council had varying levels of involvement in many City Council matters, it was asked how the overall situation could be simplified when declaring interests.
- 2.2 The Corporate Director (Governance) suggested that, for the time being and for the avoidance of doubt, the most straightforward solution could be for those Members to seek a dispensation allowing them to participate in meetings, except where a clear conflict of interests existed. This was agreed, with the Corporate Director (Governance) to have a delegation to deal with an application for up to six months. Longer term dispensations would be dealt with by the Standards Committee. The Committee added that the dispensation should be widened to include public bodies generally. Council approved this approach.
- 2.3 Some councils are taking different approaches as to whether such dispensations are necessary in respect of members of other councils who are in receipt of members allowances. However, the legislation is poorly drafted and the current Winchester approach does provide protection for its Members from vexatious complainants.
- 2.4 The six month period delegations authorised by the Corporate Director (Governance) in consultation with the Chairman were granted to Cllrs Godfrey (employment), Collin, Stallard, Mason (Members) in relation to Hampshire County Council. A similar dispensation was granted to Councillor Lipscomb (Member - South Downs National Park Authority.)
- 2.5 It is recommended that the Committee now extend these delegations for the maximum period allowed – i.e. until the Councillors concerned come up for re-election. This would be on grounds 3 and 5 set out in para 1.3 above.
- 2.6 The interim dispensations were granted in similar wording based on the following variations:
- “That in relation to membership of (or employment by) Hampshire County Council (or other public body), a dispensation be granted to speak and vote in respect of disclosable pecuniary interests and personal/prejudicial interests, except in circumstances where there is a material conflict of interest between the two authorities e.g. negotiation on land transactions or legal disputes.”

3 Declarable Pecuniary Interests - Dispensations – related to Council Tax and Council House Tenancies

- 3.1 In the new local Code, the Council continued to provide some general exceptions when dispensations would not be needed for personal and prejudicial interests. These are set out in Part 8, para 2.3 of the Code and include setting the Council Tax.
- 3.2 However, the 2011 Act does not provide such a mechanism for general exceptions to the new category of disclosable pecuniary interests. This means, when interpreted literally, that because a Councillor's home address is on the Register, it might be said that this is a disclosable pecuniary interest and no Councillor can vote on the precept, unless they have a dispensation! It could also apply, for example, if they own other property in the area.
- 3.3 This sounds absurd, but as non-compliance with the Act is potentially a criminal offence, a number of authorities (including the County Council), are using dispensations in these circumstances to avoid risk of challenge by residents who do not like the Council's decision.
- 3.4 The Group Managers will be asked to liaise with Members to put forward appropriate requests for dispensations. If the Committee approves the principle, the matter can then be dealt with by a delegation to the Corporate Director (Governance) in consultation with the Chairman each time the matter arises. The dispensation should last until each Councillor comes up for re-election.
- 3.5 A similar situation potentially arises for Members who are also Council House tenants. In relation to personal and prejudicial interests, Part 8, para 2.3 of the Code includes an exception as follows:

“housing, where you are a tenant of the Council provided that those functions do not relate particularly to your tenancy or lease.”

- 3.6 For the avoidance of any doubt, a delegation can be given to the Corporate Director (Governance), in consultation with the Chairman, to deal with such dispensations each time the matter arises. The dispensation should last until each Councillor comes up for re-election.

4 Dispensations - Annual Budget Debate – Personal and Prejudicial Interests – Outside ‘not for profit’ bodies

- 4.1 Last year (Report ST92 refers) the Standards Committee granted a dispensation in circumstances where the business of the Council could otherwise be impeded as follows:-

“ the number of Members prohibited from voting....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 at that meeting.”

The dispensation was to speak and vote.

- 4.2 It followed a request from political groups that, to enable the easier conduct of business, they wished applications to be made by affected Members for a dispensation to speak and vote at the Council’s 2012/13 budget meeting, held on 23 February 2012. Without a dispensation, those Members might otherwise be disqualified from participation, because of a personal and prejudicial interest under the Code of Conduct with regard to their role as, for example, a member of a management committee, or position as a trustee of a charity or voluntary ‘not for profit’ community body, any of which would disqualify them from participation in part of the meeting.
- 4.3 The Code permits all Members to vote at the end of the debate to set the Council Tax, but declarations of interest must be made, where necessary, on individual budget amendments which may arise during the course of that debate.
- 4.4 Last year the dispensation was granted, but on the basis that it would not extend to Members who had a personal and prejudicial interest in circumstances where their office on the outside body would give rise to a significant risk of a personal financial liability for the Member concerned.
- 4.5 The Groups have been asked that should any Member wish to seek a dispensation, they should e-mail the Head of Democratic Services, formally requesting the dispensation to speak and vote in the budget debate at Council, giving reasons and specifying to which body/bodies the dispensation should apply and the position held by the Member in each of those bodies.
- 4.6 It is recommended that the Corporate Director (Governance), in consultation with the Chairman, be authorised to grant such dispensations affecting “not for profit’ voluntary organisations and public bodies for the 2013/14 budget debate and in subsequent years.

5 Short Term Dispensations

- 5.1 There may be other instances when applications arise for short-term dispensations, when a meeting of the Standards Committee is not available to deal with the matter. It is suggested that a delegation be granted to the Corporate Director (Governance), in consultation with the Chairman, to deal with such applications when:
 - 1) The number of Councillors affected is so great a proportion of the Council that it would impede business.
 - 2) It would upset the political balance of the Council to such an extent as to alter the likely outcome of the meeting.

OTHER CONSIDERATIONS:

6 SUSTAINABLE COMMUNITY STRATEGY AND CORPORATE BUSINESS PLAN (RELEVANCE TO):

6.1 An Efficient and Effective Council.

7 RESOURCE IMPLICATIONS:

7.1 None directly.

8 RISK MANAGEMENT ISSUES

8.1 The dispensations proposed are reasonable and prudent and take account of the wider public interest in allowing the Council to function, while providing appropriate transparency.

BACKGROUND DOCUMENTS:

None

APPENDICES:

None