

## Dispensations

### Report of the Clerk and Monitoring Officer

For further information about this report please contact Jonathan Eatough, Clerk and Monitoring Officer, on 01952 383200 or Matthew Cumberbatch, Deputy Clerk and Monitoring Officer, on 01952 383255.

#### 1 Purpose of Report

To provide the Committee with details of the new rules for dispensations and to update the process for making dispensation applications

#### 2 Recommendations

That the Standards Committee:

- a) Approve the new dispensation application form and guidance attached at Appendix B to this report; and
- b) Consider and decide whether it is necessary to establish a dispensations sub-committee to consider dispensation applications.

#### 3 Background

Changes to the dispensation rules have been introduced through the Standards Committee (Further Provisions) (England) Regulations 2009. Standards for England have now released guidance on how Standard Committees can deal with dispensation applications, a copy of which is attached to this report at Appendix A.

Previously this Committee has approved a standard application form for Members to use when applying for a dispensation. The use of a standard form is not compulsory but the Committee considered it to be helpful to both the applicant and the Committee in ensuring that the appropriate information is provided.

## **4 Proposed Application Form and Guidance**

In light of the changes in the dispensation rules officers have revised and updated the standard application form. In addition, they have prepared guidance to applicants and the Standards Committee. A copy of the revised form and guidance is attached to this report at Appendix B. The Committee is asked to consider and approve both the form and guidance.

The application form and guidance for considering dispensations can be publicised to Members by direct correspondence and via the Ethical Standards Bulletin.

## **5 Dispensation Sub-Committee**

The provision of a sub-committee to consider dispensation applications is allowed for under Section 54A (1) of the Local Government Act 2000. The benefits of using a sub-committee would be the ability quickly to consider applications, which are sometimes made at relatively short notice. It would also fit in with the structure already established to assess Code of Conduct complaints.

The Committee is asked to decide whether it is necessary to establish a dispensations sub-committee to consider dispensation applications.

## **6 Financial Implications**

The costs will be met within the existing budget provision

## **7 Legal Comment**

The legal comment is contained within the main body of the report.

## **8 Equality Impact Assessment**

Officers have considered the Service's Brigade Order on Equality Impact Assessments (Personnel 5 Part 2) and have decided that there are no discriminatory practices or differential impacts upon specific groups arising from this report. An Initial Equality Impact Assessment has not, therefore, been completed.

## **9 Appendices**

### **Appendix A**

Dispensations Standards for England Guidance

### **Appendix B**

Request for a Dispensation, Guidance on Applying for a Dispensation and Standards Committee Guidance Dispensation Applications

## Appendix C1

Terms of Reference for Telford & Wrekin's Standards Committee

## Appendix C2

Terms of Reference for Shropshire and Wrekin Fire and Rescue Authority's Standards Committee

# 10 Background Papers

Local Government Act 2000 (as amended)

The Standards Committee (Further Provisions) (England) Regulations 2009

Standards Board Guidance in relation to Dispensations (issued July 2009)

Implications of all of the following have been considered and, where they are significant (i.e. marked with an asterisk), the implications are detailed within the report itself.

Balanced Score Card		Integrated Risk Management Planning	
Business Continuity Planning		Legal	
Capacity		Member Involvement	
Civil Contingencies Act		National Framework	
Comprehensive Performance Assessment		Operational Assurance	
Efficiency Savings		Retained	
Environmental		Risk and Insurance	
Financial		Staff	
Fire Control/Fire Link		Strategic Planning	
Information Communications and Technology		West Midlands Regional Management Board	
Freedom of Information / Data Protection / Environmental Information		Equality Impact Assessment	*

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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.

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## 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

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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.

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## 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.

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**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.

It is our view that the regulations do not

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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.

## Shropshire and Wrekin Fire and Rescue Service Standards Committee

### Request for a Dispensation

Please complete the following details and give as much information as possible (you can attach separate sheets of paper if required). Before completing this form please refer to the guidance attached.

Full Name	
Address	
Telephone Number	
Is your request for a Dispensation because:	
a) It is a matter where more than 50% of members who would be entitled to vote at a meeting are prohibited from voting	<input type="checkbox"/>
b) Where a 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 the voting would be prejudiced	<input type="checkbox"/>
(Please tick correct box)	
Please set out details of the matter for which you are requesting a Dispensation.	

Please set out the nature of your interest.

How long do you require the dispensation for, and why have you requested this timescale (please set out any details of specific meetings or otherwise)?

Please set out the reason why you should be granted a dispensation in this matter (please provide full details).

Signed..... Date .....

On completion of this form please send to:

Jonathan Eatough – Head of Legal Services  
Legal Services  
Telford & Wrekin Council  
PO Box 215  
Civic Offices  
Telford  
TF3 4LF

## Guidance for applying for a Dispensation

1. A dispensation allows elected members to take part in meetings of the Authority when they would normally not be able to do so because they have a personal and prejudicial interest in the business being discussed.
2. A dispensation can be applied for by any elected member of Shropshire and Wrekin Fire and Rescue Authority (this includes independent members in relation to meetings where the Code of Conduct applies in relation to their participation).
3. A dispensation can only be granted by Shropshire and Wrekin Fire and Rescue Authority's Standards Committee.
4. A dispensation can be obtained in relation to items of business to be discussed at meetings covered by the Code of Conduct. The types of meetings for which a dispensation can be applied for are as follows. Meetings of:
  - the Authority
  - its Committees and sub-committees
5. In order to apply for a dispensation elected members have to demonstrate that by not participating in a meeting of the Authority one of the two following circumstances may occur:
  - i. More than 50% of the members who would be entitled to vote at the meeting would be prohibited from voting or;
  - ii. The number of members that would be prohibited from voting would upset the political balance of the meeting to the extent that the outcome of the voting would be prejudiced.
6. Applications for dispensations must be made by the member who is making the application. It cannot be made on their behalf. For applications to Shropshire Fire and Rescue Authority Standards Committee, it has been agreed that all applications can be forwarded to the Clerk and Monitoring Officer, who will receive the applications on behalf of the Standards Committee and put it for the attention of the Committee at the earliest available opportunity.
7. When making an application for a dispensation please consider the following:
  - i. The application should be made as soon as possible. In order for the dispensation to be considered a Committee has to be convened. It is not always possible to convene a Committee at short notice and accordingly, if a late application for a dispensation is submitted, it may not be considered prior to the meeting, for which the dispensation has been requested.
  - ii. In order to assist with an application the Standards Committee have approved the use of a dispensations form which is available from Shropshire Fire and Rescue Service's website ([www.shropshirefire.gov.uk](http://www.shropshirefire.gov.uk)), the Clerk or Monitoring Officer. (The form has been produced to assist with ensuring that all the appropriate information is included. However, you do not need to use the form if you do not wish to do so.
  - iii. Advice and guidance in respect of a dispensation application can be obtained from Jonathan Eatough, Clerk and Monitoring Officer 01952 383200.

- iv. In most cases (depending on timing) the applicant will be informed as to when the dispensation application will be considered by the Standards Committee. The applicant is welcome to attend that meeting and, at the discretion of the Chair of the Committee, may make representations in support of their application. If a number of Members are applying for a dispensation and those applications are to be considered at the same time then each individual Member must consent to a joint hearing and joint representations.
  - v. A dispensation can be applied for to last up to 4 years. However, it is unlikely that such a dispensation will normally be granted. It is important that the applicant states specifically what meetings, subject etc the dispensation is being applied for.
  - vi. If the dispensation application is allowed then it will be confirmed to the applicant in writing. A copy of the dispensation will also be attached to the Members' register of interest form. It is advisable that when attending the meeting for which the dispensation has been allowed, the applicant brings a copy of the dispensation and makes specific reference to it at the point in the meeting when declarations of interest are set out. This is the responsibility of the Member who has obtained the dispensation.
8. There is no obligation upon the Standards Committee to grant the dispensation. In the event that the dispensation application has been refused the Member can seek advice as to ways in which they may make representations in respect of the matter whilst ensuring they do not breach the requirements of the Code of Conduct.

## Standards Committee Guidance Dispensation Applications

- A dispensation allows elected members to take part in meetings of the Authority when they would normally not be able to do so because they have a personal and prejudicial interest in the business being discussed.
- A dispensation can be applied for by any elected member of Shropshire and Wrekin Fire and Rescue Authority (this includes independent members in relation to meetings where the Code of Conduct applies in relation to their participation)
- A dispensation can only be granted by Telford & Wrekin Council's Standards Committee (or appropriate sub-committee of the Standards Committee).

Set out below is a checklist of what the Standards Committee has to consider when determining an application for a dispensation.

- i. Has the application been made in writing by the member who is requesting the dispensation?

Applications for dispensations must be made in writing by the member who is making the application; it cannot be made on their behalf. For applications to Shropshire and Wrekin Fire and Rescue Authority's Standards Committee Monitoring Officer will have received the application(s) on behalf of the Standards Committee.

Accordingly this aspect should have been dealt with by the time the Standards Committee considers the application. Whilst the Standards Committee has approved the use of a standard form to apply for the dispensation the applicant is not under an obligation to use the form. The applicant may decide to attend the meeting of the Standards Committee where his/ her application is to be considered. If he/she decides to do so the Chair of the Committee can allow the applicant to speak or answer questions from the Committee.

If there is more than one applicant the Chair can ask for a nominated representative from those applicants who are present to speak on their behalf. This is entirely at the discretion of the Chair. An important consideration for the Committee should be that there is a fair determination of the application and that the Committee has as much relevant information available to it when making the decision.

- ii. Does the application relate to an item of business to be discussed at meeting covered by the Code of Conduct?

The types of meetings for which a dispensation can be applied for are as follows. Meetings of:-

- the Authority
- its Committees and sub-committees

If the application does not relate to any of the above you should refer the matter back to the Monitoring Officer and direct that he contacts the applicant to provide further advice.

- iii. Has the applicant demonstrated that by not participating in a meeting of the Authority one of the two following circumstances may occur:
  - a. More than 50% of the members who would be entitled to vote at the meeting would be prohibited from voting or;
  - b. The number of members that will be prohibited from voting would upset the political balance of the meeting to the extent that the outcome of the voting would be prejudiced

If the applicant cannot demonstrate this, then the Standards Committee should not allow the application. When considering the “50%” issue the Standards Committee should disregard any dispensations already granted for the same meeting.

- iv. How long does the applicant require the dispensation for? Any grant of a dispensation has to be confirmed in writing and should clearly set out the meeting(s), subject and/or dates when it will apply. A dispensation cannot be granted for more than four years in duration. It is not expected that dispensations will be granted for lengthy periods of time.
- v. If the Standards Committee refuses the application, have reasons been given? There is no obligation upon the Standards Committee to grant the dispensation. In the event that the dispensation application has been refused the Committee should set out the reasons why. The applicant can be invited to seek advice from the Monitoring Officer as to ways in which they may make representations in respect of the matter whilst ensuring they do not breach the conditions of the Code of Conduct