



Southend-on-Sea Borough Council

Report of Deputy Town Clerk & Monitoring Officer

To

All Members of the Standards Committee

On

18 July, 2002

Report prepared by : John Williams

The Granting of Dispensations to Members with a Prejudicial Personal Interest (Part I Agenda Item)

1. Purpose of Report

- 1.1 The function of granting dispensations to Members with a prejudicial personal interest in a matter, to enable them to participate without being in breach of the Members Code of Conduct, now falls on the Standards Committee. Current legal advice is that the function cannot be delegated to a sub-committee or officer.

This report proposes a procedure for facilitating the grant of dispensations by the Standards Committee.

2. Recommendations

- 2.1 That the statutory provisions re granting dispensations to Members of Southend-on-Sea Borough Council and Leigh-on-Sea Town Council who have a prejudicial personal interest in a matter, be noted.
- 2.2 That any Member who wishes to apply for a dispensation shall submit an application in the prescribed form. Such applications should normally be submitted to the Monitoring Officer at least 10 days prior to the despatch of the agenda of a scheduled meeting of the Standards Committee.

3. Background

- 3.1 Part 3 of the Local Government Act 2000 ("the Act") establishes the new ethical framework for local government. It empowers the Secretary of State to specify the principles which are to govern conduct of Members of relevant local authorities in England, empowers him to issue a model Code of Conduct consistent with those principles and requires relevant authorities to adopt a Code of Conduct which incorporates the mandatory provisions of the Model Code.
- 3.2 Southend-on-Sea Borough Council and Leigh-on-Sea Town Council have both adopted a local Code of Conduct for Members ("**the Code**") in the form recommended in The Local Authorities (Model Code of Conduct) (England) Order 2001. The Code is contained in Part 5B of the Borough Council's Constitution.
- 3.3 The Act also provides that each Council shall appoint a Standards Committee and empowers the Secretary of State to make regulations as to size, composition, etc., and set out the functions of the Committee and empowers the Secretary of State to make regulations to govern them.

Personal Prejudicial Interests

- 3.4 The Code provides that a Member with a personal interest in a matter who attends a meeting of the authority at which the matter is considered, must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.

- 3.5 A personal interest becomes a prejudicial interest if the interest is one which a member of the public, with knowledge of the relevant facts, would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest. There are prescribed circumstances where a personal interest is deemed not to be prejudicial, and these are set out in the Code.
- 3.6 A Member with a prejudicial interest in any matter must withdraw from the room or chamber where a meeting is being held whenever it becomes apparent that the matter is being considered at that meeting, (unless he or she has obtained a dispensation from the authority's Standards Committee) and must not seek improperly to influence a decision about that matter.

Dispensations

- 3.7 The Relevant Authorities (Standards Committees) (Dispensations) Regulations 2002 ("**the Dispensation Regulations**") provide that the Standards Committee may grant dispensations to Members and co-opted members so that they can participate in business despite having a prejudicial interest without being in breach of the Code.
- 3.8 The Dispensation Regulations provide that dispensations may only be granted in two limited circumstances:-
- if half the Members entitled, or required to participate in the business of the Authority, would not otherwise be able to; or
 - the Authority would not be able to comply with political balance principles.

I do not think the effect of the second ground is very clear. In addition I have concerns about the granting of dispensations on the second ground in the case of the Licensing Committee (when the rules of natural justice and particularly the rule against bias applies) and the Development Control Committee (when rules of procedural fairness apply). Decisions on licensing and planning applications should not be based on party political issues. I have therefore sought the views of the Standards Board on these matters.

- 3.9 A request for a dispensation must be submitted in writing and the Standards Committee must be satisfied having regard to the two grounds in 3.8, the content of the application and to the other circumstances of the case, that it is appropriate to grant the dispensation. A dispensation cannot last for more than 4 years, and cannot be granted to a Member of a Scrutiny Committee to allow him or her to participate in the Scrutiny of a decision taken by another Committee in which he or she was involved.
- 3.10 The new dispensation provisions supersede the previous arrangements whereby the Secretary of State was able to grant dispensations in respect of financial interests, and local self dispensations were available in respect of non-pecuniary interests under the old National Code.

The effect of the new statutory framework is that dispensations made under the old National Code will not be valid after 1 April 2002, and Members must re-apply within the new framework. I do not think any Members are currently holding such dispensations.

Delegation

- 3.11 The current legal view is that only the Standards Committee can grant dispensations - it cannot delegate this power to a sub-committee or officer. In practice, because of the very restricted circumstances when dispensations are possible, this may not be problematical. However it may mean that it is necessary to convene a meeting at short notice to consider a request for a dispensation - and at least one co-opted member must be present to make the meeting quorate.

Process for Applying for Dispensations

- 3.12 In order to facilitate the consideration of applications for dispensations, a draft application form is attached to this report at **Appendix A**. It is suggested that Members are required to complete the application form and submit this to the Monitoring Officer, normally at least 10 days prior to despatch of the agenda of a scheduled meeting of the Standards Committee. The word "normally" has been included as it may be necessary to agree other arrangements and even convene a special meeting of the Standards Committee in certain circumstances.

4. Appendices

Appendix A – Application for Dispensation.

5. Background Papers

1. The Members Code of Conduct
2. The Relevant Authorities (Standards Committee) (Dispensations) Regulations 2001

Request to Standards Committee for Dispensation

Member's Name:

Nature of Interest:

Reason dispensation is requested:

Signed:

Dated:

FOR OFFICE USE ONLY:

Dispensation considered by
Standards Committee Approved? YES/NO