

Southend-on-Sea Borough Council

Report of Corporate Director of Support Services
to
Standards Committee
on
31st March 2010

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**Agenda
Item No.**

6

New Standards for England Guidance on Dispensations, Joint Standards Committees and “Other Action”

A Part 1 Agenda Item

1. Purpose of Report

To report on new guidance published by Standards for England concerning Dispensations, Joint Standards Committees and “Other Action”.

2. Recommendations

- 2.1 That the guidance published by Standards for England be noted.
- 2.2 That the Council establishes a Dispensations Sub-Committee with the terms of reference set out in **Appendix 2**.

3. Background

3.1 Dispensations

The Standards Committee (Further Provisions) (England) Regulations 2009 makes changes to the criteria for granting dispensations for Members to speak and vote when they have a prejudicial interest. A Standards Committee can grant a dispensation to a Member:

- 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.

To decide whether these criteria apply, Members must ignore any dispensations that have already been given to others at the meeting. The requirement to ignore any dispensations already granted means that any previously granted dispensations are disregarded for the purposes of working 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, a situation could arise where once two people had been granted Dispensations; the remaining four would be ineligible. This is because at that point there would be less than 50% of the Committee who could not vote.

Even if the criteria apply, Members cannot get a dispensation to:

- allow them to take part in voting at a Scrutiny Committee about a decision made by any body of which they were a member at the time the decision was taken; or
- allow an executive Member with a prejudicial interest in an item of executive business to take an executive decision about it on their own.

A Member must submit an application in writing for consideration by the Standards Committee. It is up to the Standards Committee whether or not they grant a dispensation and there is no right of appeal from their decision.

A Standards Committee can decide the nature of any dispensation it grants. For example, the dispensation may allow a 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. After four years has elapsed since a dispensation was granted, it can no longer be used.

The decision must be recorded in writing and must be kept with the register of interests maintained by the Monitoring Officer.

In practice, the grant of dispensations will continue to be problematic because Members are rarely aware of the number of Members who are going to be debarred from the consideration of a particular matter by reason of prejudicial interests until it is too late to call a Standards Committee or Sub-Committee to consider their requests for dispensation before the meeting takes place. The second ground for a dispensation would suggest that a dispensation can now only be granted where the request is supported by clear evidence that voting at the meeting on this item will be conducted on strict party lines, and that the Standards Committee should only grant the minimum number of dispensations necessary to secure that the same result is achieved as should have been achieved had no Member had prejudicial interests (i.e. that the majority party, if any, secures a majority of votes, but not that it secures the same degree of majority as it would otherwise have secured).

Standards for England has issued new guidance on Dispensations to reflect the new Regulations (**Appendix 1**). The guidance recommends that the Standards Committee considers the need for criteria to be applied to requests for Dispensations and accordingly a draft Protocol has been prepared (see 3.2 below).

3.2 The Committee is asked to consider establishing a Dispensations 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 to quickly consider applications which may need to be made at relatively short notice. It would also fit in with the structure already established to assess Code of Conduct complaints. Proposed terms of reference and a Protocol are set out at **Appendix 2** along with consequent amendments needed to Article 9(h) of Part 2 to the Constitution. If the Committee is in agreement, then the proposal will form a recommendation to Council as it will involve minor changes to the Constitution.

3.3 Joint Standards Committee

Pursuant to the Standards Committee (Further Provisions) (England) Regulations 2009, two or more local authorities may set up a Joint Standards Committee to discharge all of each participating authority's standards functions, or can be established to discharge just some of the authorities' standards functions, such that each authority retains its own Standards Committee to discharge those standards functions which have not been allocated to the Joint Committee.

Accordingly, authorities might agree to establish a Joint Standards Committee which would establish a Referrals and a Review Sub-Committee, but each retain their own Standards Committees to discharge the functions of conducting hearings, providing Member training and promoting high standards of conduct. But where all standards functions are allocated to the joint Standards Committee, then participating authorities would no longer maintain their own separate Standards Committees. Where a function is allocated to the Joint Standards Committee, it cannot then be discharged by the Standards Committee of an individual participating authority.

The finances are to be shared as agreed by the authorities involved and in default of agreement will be decided by an arbitrator appointed by them.

Where authorities wish to establish a Joint Standards Committee, the full Council of each participating authority would need to resolve:

- to establish the Joint Standards Committee;
- which standards functions are to be allocated to the Joint Committee and which, if any, are to be retained by the authority's own Standards Committee;
- the administrative arrangements to support the Joint Standards Committee;
- whether standards complaints should be addressed directly to the Joint Standards Committee, or should continue to be addressed to the individual authority;
- the number of members, including Independent and Parish members, to be appointed to the Joint Standards Committee by each participating authority, and their terms of office;

- make provision for the Joint Standards Committee to appoint members to its Referrals, Review and/or Hearings Sub-Committees, as required;
- provide for the payment of allowances to members of the Joint Standards Committee;
- provide a procedure for an authority to withdraw from the Joint Standards Committee; and
- provide how the costs incurred by the Joint Standards Committee shall be shared between the participating authorities (or in default to be determined by an arbitrator).

The Standards Board has producing lengthy guidance on Joint Standards Committees which may be viewed at:

www.standardsforengland.gov.uk/Guidance/TheLocalStandardsFramework/StandardsCommittees/Joint%20Standards%20Committees%20FINAL_for%20web1.pdf

3.4 “Other Action”

Members will be aware that when a complaint is considered at the initial assessment stage or upon review by the Assessment Sub-Committee or Review Sub-Committee respectively, the Sub-Committee has 3 options. It can decide to refer the complaint to the Monitoring Officer, refer it to Standards for England or take no action.

If it decides to refer a complaint to the Monitoring Officer, it can direct the Monitoring Officer to investigate the matter. Alternatively, it can direct the Monitoring Officer to take steps other than carrying out an investigation and this is known as “other action”.

Standards for England has published “Other Action Guidance” (**Appendix 3**). The key messages on other action are:

- Complaints should not be referred for other action when an investigation is in the public interest, when an allegation challenges the Member’s honesty or integrity, or where if proven to be true, the alleged conduct would undoubtedly warrant a sanction.
- A referral for other action closes the opportunity to investigate.
- A decision to refer a complaint for other action makes no finding of fact, and the action decided on must not imply that the subject of the complaint has breached the Code of Conduct.
- Assessment Sub-Committees cannot direct the subject Member or any other party to take action. The direction is to the Monitoring Officer.
- Although there is no formal route for dealing with a Member who refuses to comply with other action, failure to cooperate may amount to bringing the authority into disrepute.

Generally, there are two indicators for other action:

- (i) when there is evidence of poor understanding of the Code of Conduct and/or the authority's procedures; or
- (ii) when relationships within the authority as a whole have broken down to such an extent that it becomes very difficult to conduct the business of the Council.

The steps a Standards Committee can direct a Monitoring Officer to take are:

- arranging for the Member to attend a training course;
- arranging for the Member and complainant to engage in a process of conciliation;
- any other steps (not including an investigation) which appear appropriate.

Training may be in anything the Assessment Sub-Committee deems appropriate, such as:

- chairing skills
- working with external bodies and partnerships
- governance issues
- the Code of Conduct
- Council procedures and protocols
- legal matters
- planning and licensing
- working with officers
- use of Council resources

In general, other action may take the form of directing the Monitoring Officer to arrange for the:

- redrafting of Council procedures or policies
- training of Members of the Council as a whole
- mentoring of a Member or Members, or whole Council
- management of conflict
- development of Council protocols
- implementation of a Council complaints procedure

4. Background papers

None

5. Appendices

Appendix 1 – Dispensations - published by Standards for England

Appendix 2 – Terms of reference of the Dispensations Sub-Committee (and Protocol)

Appendix 3 – Other Action Guidance - published by Standards for England

TERMS OF REFERENCE OF THE DISPENSATIONS SUB-COMMITTEE

1. Part 2 – Article 9(h) of the Constitution

To be amended to read as follows (the additional words being shown underlined)

“To grant dispensations to elected and co-opted members with prejudicial interests through the Dispensations Sub-Committee.”

2. Part 3, Schedule 3 of the Constitution refers

7.6.4 DISPENSATIONS SUB-COMMITTEE

Membership:

3 members of the Standards Committee, including at least one Independent Member who will Chair the Sub-Committee.

The Sub-Committee will be appointed by the Head of Legal & Democratic Services after consultation with the Chairman of the Standards Committee, from Members of the Standards Committee subject to Members availability and ensuring compliance with the legal requirements on the make up of the Sub-Committee when the application is from a Town Councillor.

Quorum:

3

Terms of Reference:

To consider and determine written applications for dispensations in accordance with the Protocol set out below.

Status of Meetings:

The normal principles of access to Council meetings apply in accordance with Regulation 8 of the Standards Committee (England) Regulations 2008.

Reports to:

Standards Committee

Protocol for the Grant of Dispensations from the Code of Conduct

1. Legislation allows the Standards Committee, or its Sub-Committees, to grant dispensations to Members allowing them to speak and vote at a meeting when they have a prejudicial interest. This Protocol sets out how requests for dispensations should be made, the process that will be followed when the request is considered, and the criteria that will be applied when the request is determined. This Protocol has been approved by the Standards Committee having regard to guidance on dispensations given by the Standards Board for England.
2. A Member seeking a dispensation should submit an application in writing to the Head of Legal & Democratic Services.
 - The application should explain the reasons why a dispensation is desirable and the relevant grounds.
 - When the application is based on the second ground there must be an explanation that voting will be on party lines, how that voting would pan out if all relevant Members who might attend could vote, which other Members (if any) are also subject to prejudicial interests and so what the voting would be if no dispensations were granted. It is important to note that voting cannot take place on party lines in respect of regulatory committees and accordingly a dispensation cannot be granted for Development Control Committee, Licensing Committee etc.
 - The application should be submitted as early as possible, and (where the meeting date is known) in any event no later than fifteen working days before the meeting in question is due to take place. Because a Standards Sub-Committee must be convened to consider the application, dispensations cannot be given without due notice.
 - It is important to note that a dispensation only excuses a Member from breach of the Code of Conduct it does not remove the risk of a decision being invalidated on the grounds of bias e.g. if a Member has made a statement of predetermination. Accordingly where a Member is eligible for a dispensation on the proportionality ground it is likely to be inappropriate to grant the dispensation if it would render the decision susceptible to judicial review on the grounds of bias.
3. An application for dispensation will be considered on paper by a meeting of the Standards Dispensation Sub-Committee. Oral representations to the Sub-Committee will not normally be considered. In deciding whether to grant the dispensation the Sub-Committee will consider
 - (a) whether the legal criteria for the grant of a dispensation are met (see paragraph 4 below)

- (b) the reasons why a dispensation is desirable as put forward in the written application
 - (c) the criteria referred to below and in the guidance issued by the Standards Board for England
 - (d) any other relevant circumstances
4. The Standards Sub-Committee may grant a dispensation only 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.

The Sub-Committee will ignore any dispensations that have already been granted to other Members at the meeting when deciding whether either of these criteria apply.

A dispensation may not be granted:

- To allow a Member to vote at a Scrutiny Committee about a decision taken by him or by any body they were a Member of at the time the decision was taken
- To allow a Cabinet Member with a prejudicial interest in a matter to take an executive decision about it on his own

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

5. Where the criteria set out in paragraph 4 apply, the Dispensation Sub-Committee will take into account the following criteria in addition to the reasons put forward in the application and any other relevant circumstances:
- 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? A dispensation is unlikely to be granted where the decision is one having a direct and significant financial effect on the applicant or a relative.
 - Can the decision be readily taken in an alternative way without damage to public confidence in the conduct of the Council's business? If a Member with a prejudicial interest could be readily substituted by another Member from the same political party that may be preferable to the grant of a dispensation.
 - Is the interest common to Member and to a significant proportion of the general public?

- Is the participation of the member in the business that the interest relates to justified by the member's particular role or expertise?
 - Is the business that the interest relates to about a voluntary organisation or a public body which is to be considered by a Scrutiny Committee? And is the Member's interest not a financial one?
6. In cases where a dispensation is granted the Dispensation Sub-Committee will consider the nature of the dispensation – i.e. whether the dispensation should allow the Member to speak and not vote, or to fully participate and vote. In most cases where the dispensation is granted in the light of the above criteria, it will be appropriate to grant a dispensation allowing full participation.
- The Sub-Committee will also consider how long the dispensation should apply. In some cases, an application for a dispensation may be made before it is known exactly when the meeting will be. In those cases the Sub-Committee will normally grant the dispensation for a three month period, to permit flexibility.
7. The decision of the Dispensations Sub-Committee will be recorded in writing and kept with the register of interests established and maintained under Section 81(1) of the Local Government Act 2000.

Standards Committee 31st March 2010