

WILTSHIRE COUNCIL

STANDARDS COMMITTEE

18 May 2011

DISPENSATIONS APPLICATIONS

Purpose of Report

1. At its meeting on 19th May 2010 the Standards Committee asked the Monitoring Officer to provide an annual overview of dispensation applications made to the Committee. This is the first of those annual reports, and covers the period from March 2010 to April 2011.

Background

2. The statutory Code of Conduct for members prevents councillors from speaking and voting on a matter in which they have a personal and prejudicial interest unless they have been granted a dispensation to do so by the Standards Committee.
3. A dispensation may be considered if more than 50% of the voting members of a council or a council's committee would be prevented from speaking and voting on an item because of an existing personal and prejudicial interest, effectively impeding the transaction of the council's business. The Standards Committee does not have to grant a dispensation, and will consider each application on its merits.
4. Members wishing to receive a dispensation are required to submit a completed application form to the Monitoring Officer outlining their reasons for requesting a dispensation. The Monitoring Officer will arrange for a dispensations sub-committee of the Standards Committee to meet and consider the application.
5. Dispensations may be granted for:
 - a. One item of business, or;
 - b. For a period not exceeding 4 years, and;
 - c. Allowing the member to participate in the meeting and vote, or;
 - d. Allowing the member to speak but not to vote.
6. In reaching a decision on a dispensation request the dispensation sub-committee takes into account:
 - a. The nature of the prejudicial interest concerned;
 - b. The need to maintain public confidence in the conduct of the Council's business;
 - c. The impact on the outcome of the proposed vote;
 - d. The need for efficient and effective conduct of the Council's business; and
 - e. Any other relevant circumstances.

Main Considerations for the Committee

7. During the period March 2010 to April 2011 the Monitoring Officer received 31 applications for dispensations.
8. Four applications were not put before the sub-committee. Three of these applications related to personal and prejudicial interests that may have prevented the members from participating in council business, but did not meet the 50% threshold of members having a prejudicial interest required before a dispensation can be granted. The fourth applicant did not have a personal or prejudicial interest in the business for which a dispensation was applied.
9. In all four cases the Deputy Monitoring Officer wrote to the members concerned to explain why their applications would not be put forward to the dispensations sub-committee, and explaining the effect that this would have on their ability to speak and vote in the business concerned. Copies of these letters (redacted to maintain anonymity for the members concerned) are attached at Appendix A. Members of the Standards Committee may find it useful to read them to get an overview of some of the difficulties that councillors, particularly members of smaller parish councils, may experience in understanding the complexities of the regulations concerning personal and prejudicial interests.
10. Five applications have not yet been determined – the dispensation sub-committee will consider them on 19th May 2011.
11. 21 applications have been determined since April 2010. 13 dispensations were granted, 8 applications were refused.
12. 12 of the applications that have been considered this year were from “dual hatted” members of Wiltshire Council who are also members of their respective town councils and of the corresponding area boards. All of the applicants were granted dispensations, although members are asked to note what is said in paragraph 13 of this report. The issues arising from this dual-hatted membership have been covered in previous reports by the Monitoring Officer so will not be discussed further in this report.
13. It is worth noting that one of the applications from a dual-hatted member was for a dispensation to speak and vote in all matters relating to grant applications to the Area Board by Westbury Town Council, asset transfers to Westbury Town Council, and any other matters where the member might find himself to have a personal and prejudicial interest. On this occasion, the sub-committee granted a dispensation for the first two elements of the application, but refused to grant a dispensation for the third element. This is because the sub-committee felt that the granting of a blanket dispensation that would effectively circumvent the intention of the prejudicial interest provisions of the Code of Conduct was not what was intended by the dispensation provisions and was not in the public interest. It was felt that the granting of a dispensation in those terms would be likely to undermine public confidence in the conduct of the council’s business.
14. It is also worth noting that the more recent sub-committee dispensations have been granted for a specific period subject to there being no material change in the circumstances described in the dispensation application. Members of the sub-committees have felt that this provision would tend to safeguard the public interest and public confidence in the decision making process of councils.

15. Members' attention is drawn to the minutes of the sub-committee meeting of 27 July 2010, attached at Appendix 2. This meeting is of particular interest because although the members all applied for a dispensation to speak and vote in matters relating to a local planning application, only one dispensation was granted out of the four applications that were submitted. The reasoning behind the refusals was that 3 of the applicants had interests that the sub-committee considered to be particularly prejudicial, such that the granting of a dispensation would not be in the public interest. The result of refusing 3 of the 4 applications was that the parish council would remain inquorate when considering this planning application. Members of the dispensation sub-committee were mindful of the fact that the parish council was only a consultee, rather than the body that would determine the planning application, and that members of the parish council would be able to make representations to the decision making body in their private capacity. The dispensations sub-committee did not feel that public confidence in the decision making process would be promoted should they grant dispensations in the particular circumstances of three of these applicants.
16. At another dispensation sub-committee meeting members considered applications from several members of Westbury Town Council's Highways and Development Committee. These members submitted dispensation applications to speak and vote on matters relating to the Leigh Park Community Association, of which they were on the management committee. There were two matters of interest in the dispensation sub-committee's consideration of these applications. The first was the nature of the interests. After some debate, the sub-committee determined that although they agreed the members had a personal interest, they did not consider that the interest amounted to a prejudicial interest. For that reason, they did not consider that a dispensation was necessary. However, they did concede that the point about the nature of the interest was not entirely clear. They therefore went on to state that it was open to Westbury Town Council to consider matters relating to the Leigh Park Community Association at meetings of the full council, rather than in the Highways and Development Committee. Should they do this, the council would not be inquorate, and no dispensation would be required.
17. What is clear from the minutes of dispensation sub-committee meetings and from the dispensations that have been granted is that the sub-committee's approach to dispensation applications has evolved, with a strong focus on understanding and protecting the public interest before reaching a determination. The experience of the past year of dealing with dispensation requests is that this is a complex and highly nuanced area of the Standards Committee's work, requiring a clear understanding of the provisions of the Code where these relate to personal and prejudicial interests, and an ability and willingness to balance these against the public interest.
18. It is unclear what, if any, provisions have been made in forthcoming legislation to provide dispensations after the statutory Code of Conduct and Standards Committees have been abolished. There have been indications that it will become a criminal offense for members to act on matters in which they have a prejudicial interest. However, the nature of a prejudicial interest under any new legislation has not yet been defined, nor has the government issued any indication of what arrangements may be made for the granting of dispensations. The Deputy Monitoring Officer has written to the DCLG to seek clarification, but has not received a response.

Proposal

19. Members are asked to note the contents of this report.

Risk Assessment

20. There are no risks associated with the proposal in this report.

Financial, Environmental and Legal Implications

21. There are no financial, environmental or legal implications associated with the proposal in this report.

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The following unpublished documents have been relied on in the preparation of this Report:

None