

STANDARDS DISPENSATION SUB-COMMITTEE

MINUTES of the STANDARDS DISPENSATION SUB-COMMITTEE held at COUNTY HALL, TROWBRIDGE on THURSDAY 26 NOVEMBER 2009.

PRESENT:

Independent Member - Mr G Robson OBE (Chairman)
Town/Parish Member - Mr R Oglesby JP
Wiltshire Council Member - Cllr E Clark

OTHERS

Dispensation Applicant - Cllr R Hawker

1. Election of Chairman

Mr G Robson OBE was elected as Chairman for one meeting only.

2. Declarations of Interest

Cllr Clark declared an interest in Item No. 5, as the Chairman of Trowbridge Area Board.

3. Consideration of Dispensation Request (A)

The Monitoring Officer introduced a report presenting two dispensation requests received from Cllr Russell Hawker of Wiltshire Council and Westbury Town Council. Both requests related to grant applications scheduled for consideration by Westbury Area Board on 1 December 2009.

Grant application from Westbury Town Council

The first request related to a grant application from Westbury Town Council submitted to Westbury Area Board, who are the decision making body in this matter.

The Monitoring Officer explained the law and guidance relevant to this request and advised, in particular, that in his view a prejudicial interest would arise in these circumstances based on the following reasoning:

1. As a member of Westbury Town Council Cllr Hawker has a personal interest in any business of the Westbury Area Board that relates to or is likely to affect Westbury Town Council (paragraph 8 (1)(a)(ii)(aa) Wiltshire Council's Code of Conduct for Members).
2. Westbury Town Council is the applicant for and potential beneficiary of a grant from Westbury Area Board. In this situation, a member of the public with knowledge of the relevant facts would reasonably regard Cllr Hawker's interest as a member of the Town Council as so significant that his judgment of the public interest on this matter is likely to be prejudiced. (paragraph 10 (1) Code of Conduct).
3. The matter in question affects the financial position of Westbury Town Council (paragraph 10(2)(a) of the Code of Conduct)
4. None of the exemptions in paragraph 10(2)(c) of the Code of Conduct apply.
5. So Cllr Hawker has a prejudicial interest in respect of this item of business and would be unable to participate and vote (save for being able to make representations to the same extent as any member of the public before withdrawing from the meeting).

Cllr Hawker reported that although he did not agree that he had a prejudicial interest in the matter, he suspected that the Monitoring Officer's view would be one shared by most monitoring officers and Standards for England.

Two of the four voting members of Westbury Area Board had applied for dispensations. One of the other two voting members was unwell and there was no indication of when they would be well enough to attend meetings. Cllr Hawker requested a dispensation to apply to this and future meetings of Westbury Area Board in respect of the consideration of grant applications from Westbury Town Council.

Members noted that Westbury Area Board were due to consider another grant application from Westbury Town Council in February 2010, and further applications beyond that. They discussed whether it may be sensible therefore to grant an appropriate dispensation for the remainder of the life of Wiltshire Council (until May 2013).

Members also noted that if grant applications from other parties were consistently refused and those from the Town Council were consistently granted then blanket dispensations enabling dual-hatted councillors to vote on such applications may add to any perception of unfairness.

Members agreed that the Council's business would be impeded if a dispensation was not granted in this case.

Members noted that in order to grant a dispensation, more than 50% of the members who would be entitled to vote at the meeting must be prohibited from voting. The Monitoring Officer clarified that the wording “entitled to vote” assumes attendance at the meeting. It was noted that this legal criterion would only be met if the voting member currently unable to attend due to ill health or the other member entitled to vote, did not attend the meeting. If all four members did attend, then exactly 50% (not “more than 50%”) of the members entitled to vote would be prohibited from voting and the criterion would not be met. The meeting would not be quorate (3 members required for a quorum), and so the business could still not be conducted. The Monitoring Officer confirmed that quorum was a separate issue to be considered in the context of the constitution of area boards. Members, therefore, agreed that any dispensation granted should only come into effect if either of the two voting members who were not members of Westbury Town Council did not attend the meeting.

Members agreed that there was no issue of political balance with respect to this application as the rules on political proportionality do not apply to area boards. They further agreed that public confidence would not be undermined by the granting of a dispensation in these circumstances where the objective was to enable the Council to discharge its business in an open and transparent manner.

Grant application from Westbury Heritage Society

The second request related to a grant application from Westbury Heritage Society. Westbury Area Board were the decision making body in this matter. Cllr Hawker is a member of Westbury Town Council and the Town Council’s representative on the committee of Westbury Heritage Society. Cllr Hawker’s application clarified that this role is non-voting and observational in nature.

Following a member query, Cllr Hawker confirmed that Westbury Heritage Society is a registered charity and that his position on its committee is included in his Register of Interests. He also reported that he is a member of the Society in a private capacity.

The Monitoring Officer explained the law and guidance relevant to this request and advised, in particular, that in his view a prejudicial interest would arise in these circumstances based on the following reasoning:

1. As a member of the Westbury Heritage Society, Cllr Hawker has a personal interest in any business of the Westbury Area Board that relates to or is likely to affect Westbury Heritage Society (paragraph 8 (1)(a)(ii)(bb) Wiltshire Council’s Code of Conduct for Members).
2. Westbury Heritage Society is the applicant for and potential beneficiary of a grant from Westbury Area Board. In this situation, a member of the public with knowledge of the relevant facts would reasonably regard Cllr Hawker’s interest as a member of Westbury Heritage Society as so significant that his judgment of the public interest on this matter is likely to be prejudiced. (paragraph 10 (1))

Code of Conduct).

3. The matter in question affects the financial position of Westbury Heritage Society (paragraph 10(2)(a) of the Code of Conduct).

4. None of the exemptions in paragraph 10(2)(c) of the Code of Conduct apply.

5. So, Cllr Hawker has a prejudicial interest in respect of this item of business and would be unable to participate and vote (save for being able to make representations to the same extent as any member of the public before withdrawing from the meeting).

The Monitoring Officer explained that the item for which the dispensation application had been requested did not satisfy the relevant criteria within the Dispensation Regulations under which the Sub-Committee may only grant a dispensation where the transaction of the Council's business would otherwise be impeded by the Code of Conduct because more than 50% of the members who would be entitled to vote at a meeting are prohibited from voting. In this instance Cllr Hawker was the only voting member with a prejudicial interest. If the voting member who is unwell did not attend the meeting, two voting members will still be eligible to vote, meaning only 33% of the members eligible to vote would be prohibited from doing so. The meeting would not be quorate and so the business could still not be conducted but the Monitoring Officer confirmed that quorum is a separate issue.

Members expressed regret that the legal requirements for granting dispensations prevented them from assisting Westbury Area Board in conducting the Council's business in relation to this issue. They further regretted that the situation might result in a delay to Westbury Heritage Society receiving important grant funding.

Members agreed that if the absence of a single voting member could impede the business of the Council as it had done in both of the requests for dispensations considered here then the composition of Area Boards requires further examination. The Monitoring Officer agreed to raise these concerns with the Head of Community Governance to explore how best to resolve them.

Having considered the position carefully, as summarised above, the Sub-Committee

Resolved:

- 1. To grant a dispensation to Cllr Russell Hawker to enable him to participate and vote at meetings of Westbury Area Board on matters pertaining to grant applications from Westbury Town Council, but only where one of the remaining voting members of Westbury Area Board, who is not also a member of Westbury Town Council, is absent from the meeting.**

2. **The dispensation granted in 1 above is to apply until 30 April 2013, subject to review in the event of any material change of circumstances.**
3. **Not to grant a dispensation to Cllr Russell Hawker to enable him to participate and vote on the grant application submitted by Westbury Heritage Society to Westbury Area Board, scheduled for consideration on 1 December 2009, because the request failed to meet the criterion defined in Paragraph 17(1)(a)(i) of The Standards Committee (Further Provisions) (England) Regulations 2009.**

4. Consideration of Dispensation Request (B)

The Monitoring Officer introduced a report presenting a dispensation request received from Cllr Michael Cuthbert-Murray of Wiltshire Council and Westbury Town Council. The request was identical in nature to that received from Cllr Hawker relating to the grant application from Westbury Town Council considered under item 3. Adopting the same approach, the Sub-Committee reached the following resolution:

Resolved:

To grant a dispensation to Cllr Michael Cuthbert-Murray to enable him to participate and vote at meetings of Westbury Area Board on matters pertaining to grant applications from Westbury Town Council, but only where one of the remaining voting members of Westbury Area Board, who is not also a member of Westbury Town Council, is absent from the meeting.

The dispensation granted in 4 above is to apply until 30 April 2013, subject to review in the event of any material change of circumstances.

6. Consideration of Dispensation Request (C)

This item concerned a dispensation request received from Cllr Peter Fuller of Wiltshire Council and Trowbridge Town Council. The request related to future grant applications from Trowbridge Town Council submitted to Trowbridge Area Board.

The Monitoring Officer advised that Cllr Clark's position as Chairman of Trowbridge Area Board gave rise to a potential conflict of interest in this matter. The Sub-Committee therefore,

Resolved:

To defer consideration of Cllr Peter Fuller's dispensation request to a future Dispensation Sub-Committee with different membership.

(Duration of meeting: 3.30pm – 5.10pm)

The officer who has produced these minutes is Henry Powell, Senior Scrutiny Officer,
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