

WILTSHIRE COUNCIL

STANDARDS COMMITTEE

22 September 2010

Dispensations - Dual-Hatted Members of Area Boards

Purpose of Report

1. To invite the Committee to agree a policy on the granting of dispensations to dual-hatted members of area boards in relation to their consideration of applications by their parish, town or city councils ('parish councils') for grant or transfer of community assets.

Background

2. At its meeting on 19 May 2010 the Committee considered a report reviewing the grant of dispensations to dual-hatted members of area boards under the Standards Committee (Further Provisions) (England) Regulations 2009.
3. Under the 2009 regulations a member with a prejudicial interest may apply to the Standards Committee for a dispensation to enable them to take part and vote on a matter without breaching the Code of Conduct. The regulations provide that a dispensation may be granted where the transaction of the Council's business would otherwise be impeded by, or as a result of, the Code of Conduct because:
 - a. more than 50% of the members who would be entitled to vote at a meeting are prohibited from voting; or
 - b. the number of members prohibited from voting at a meeting would upset the political balance of the meeting to such an extent as to prejudice the outcome of voting in that meeting;

Sub-paragraph b. above is not relevant to area boards as they are not politically balanced.

4. It is not legally possible to grant a blanket dispensation to all dual-hatted members of area boards. In accordance with Standards for England's guidance, applications must be made on an individual basis and considered on their own merits. Dispensations may only be granted if the legal criteria referred to in paragraph 14 above are met.
5. The regulations do not permit the grant of a dispensation for a period of more than 4 years.

6. At its meeting on 21 July 2010 the Committee expressed concern that there was inconsistency between different dispensation sub-committees as to the duration of dispensations granted to dual-hatted members of area boards. I was asked to look into the situation and report back to the next meeting with proposals for a policy that would, so far as possible, ensure consistency of approach in these cases.

Main Considerations for the Council

7. Appendix 1 provides a summary of the numbers of dual-hatted members on each of the 18 area boards and gives details of the dispensations which have been granted to dual-hatted members to date.
8. Until May 2010 the practice of the Dispensation Sub-Committee was generally to grant dispensations to dual-hatted members for the remainder of their term as unitary councillors, to 30 April 2013, subject to any material change of circumstances. On 11 May 2010 the members of the Dispensation Sub-Committee for that occasion decided that a more limited approach was appropriate to enable the position to be reviewed by the Standards Committee in the light of developments in the functioning of area boards. The Sub-Committee also had reservations as to whether the regulations permitted the granting of a dispensation subject to any change of material circumstances and questioned the basis on which a dispensation once granted could be withdrawn subsequently. The Sub-Committee, therefore, granted the dispensations requested on that occasion for a period of about a year, until 30 April 2011. The Sub-Committee also proposed, and it was subsequently agreed, that the Standards Committee should review all dispensations granted on an annual basis.
9. On 17 June 2010, a differently constituted Dispensation Sub-Committee reverted to the original practice of granting dispensations for a longer term, until April 2013, as the members of the Sub-Committee were concerned that the granting of shorter periods of time would involve unnecessary and disproportionate administrative time and cost in bringing cases back for reconsideration.
10. On 19 August 2010 the Dispensation Sub-Committee followed the same approach and granted dispensations to run until the next election in May 2013, subject to there being no material change in the circumstances under which the dispensation was granted. It is relevant to note that that case involved Westbury dual-hatted members submitting a fresh application for a dispensation because the circumstances under which their dispensations were originally granted had changed.
11. In the interests of fairness and consistency of treatment it is desirable for the Standards Committee to agree a policy on the duration of a dispensation that will normally be applied in cases of this kind. Even where a policy is in place, the Dispensation Sub-Committee will be required to consider each case on its merits and may depart from the policy where exceptional circumstances warrant this.

12. On balance, I consider that the most suitable policy would be to grant such dispensations for a period until the end of the unitary councillor's term of office in May 2013, subject to any material change in the circumstances under which the dispensation is granted. This is on the understanding that each case will be considered on its facts and exceptions will be made in exceptional circumstances. This will provide certainty and consistency for councillors and avoid the unnecessary burden of re-applying. It will also avoid the extra administrative time and cost for the Council of reconsidering cases, except where there is a material change of circumstances.
13. I have considered the legality of making a dispensation subject to a material change of circumstances. In the absence of any case law determining the point I am of the view that this is permissible under the regulations. Further, it seems to me to be appropriate to review the grant of a dispensation when the circumstances under which it was granted no longer apply or have materially changed.
14. In order to provide further consistency the Committee may wish to consider having a fixed membership for the Dispensation Sub-Committee. The disadvantage of this, however, is that it is likely to be more difficult to arrange meetings within the timescales required under the Council's arrangements.
15. The Standards Committee will continue to monitor the grant of dispensations through the minutes of the Dispensation Sub-Committee and on an annual basis, as agreed previously.

Environmental Impact

16. None.

Equalities Impact

17. None

Financial Implications

18. None.

Legal Implications

19. The legal criteria for granting dispensations are contained in the Standards Committee (Further Provisions) (England) Regulations 2009 and are incorporated in the Standards Committee's procedure.

Proposal

20. The Committee is, therefore, invited to agree a policy for the duration of dispensations granted to dual-hatted members of area boards as set out in paragraph 12 above, with effect from the date of this meeting.

Ian Gibbons
Monitoring Officer

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The following unpublished documents have been relied on in the preparation of this Report: None