

**Dispensations - Dual-Hatted Members of Area Boards**

**Purpose of Report**

1. To advise the Committee on the position of dual-hatted members of area boards in relation to their consideration of grant applications by parish, town and city councils ('parish councils'), and on the grant of dispensations to such members since the Committee adopted its procedure in July 2009.

**Background**

2. At its meeting on 8 July 2009 the Committee agreed a procedure for the determination of requests for dispensation under the Standards Committee (Further Provisions) (England) Regulations 2009. A copy of the procedure is attached at Appendix 1.
3. Since July 2009 we have received a total of 13 requests for dispensation, 10 of which have been from dual-hatted members of Wiltshire Council's 18 area boards and 3 from parish councillors. This report focuses on dispensations for dual-hatted members, who for these purposes are Wiltshire Councillors who are both a member of an area board and a member of a parish council which is represented in the wider membership of that board.
4. At a meeting of the Dispensation Sub-Committee on 8 January 2010, following consideration of a dispensation request from a dual-hatted member of the Trowbridge Area Board, the Sub-Committee asked me to review the position of dual-hatted members on area boards, with particular reference to the distribution of grants to parish councils by area boards, and to report back to the Standards Committee.

**Main Considerations for the Council**

5. The position of dual-hatted members on area boards in relation to the determination of matters such as the award of grants or transfer of assets to parish councils has been a significant issue for some area boards, particularly those with a large proportion of dual-hatted members from the same parish council.
6. Appendix 2 gives a summary of the numbers of dual-hatted members on each of the 18 area boards and details of the dispensations which have been granted to date in respect of these.
7. My advice with regard to the Code of Conduct is that a dual-hatted member considering a grant application from the parish council they represent has a prejudicial interest, based on the reasoning set out below. Part 2 of the Code is attached as Appendix 3 for ease of reference.

8. The particular issue for dual-hatted members, so far as the Code of Conduct is concerned, is how the matter under consideration affects them in their capacity as a member of the parish council, rather than how it affects them personally, though it will always be necessary to consider whether there are any personal circumstances which bring into play other provisions of the Code relating to interests.
9. A dual-hatted member is required under paragraph 13(1) of the Code to register their membership of a parish council in their register of interests. As the parish council is a body exercising functions of a public nature this falls within the category of interest described in paragraph 8(1)(a)(ii)(aa) of the Code.
10. Under paragraph 8(1)(a), and 8(1)(a)(ii)(aa), they have a personal interest in any business of the area board that relates to or is likely to affect the relevant parish council.
11. It is then necessary to go on to consider whether the personal interest is also a prejudicial interest. Where the area board is considering a grant application by the parish council it seems clear that a member of the public with knowledge of the relevant facts would reasonably regard the member's interest, as a member of the parish council, as so significant that their judgment of the public interest on the matter is likely to be prejudiced - paragraph 10 (1) of the Code). In other words a member of the public knowing all the facts is likely to perceive that the councillor is bound to vote in favour of awarding grant to the body they represent. Other organisations competing for grant funding will perceive bias and unfairness if dual-hatted members are involved in deciding grants for the council they represent.

12. Paragraph 10(2) of the Code provides:

You do not have a prejudicial interest in any business of the authority (*i.e. Wiltshire Council - Area Board*) where that business-

- a. does not affect your financial position or the financial position of a person or body described in paragraph 8 (*i.e. the parish council*);
- b. does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8 (*parish council*). [*italics mine*]

The business of determining the parish council's grant application clearly affects the financial position of the parish council and, therefore, the exception in paragraph 10(2) of the Code does not apply.

13. None of the exemptions in paragraph 10(2)(c) of the Code apply.
14. A dual-hatted member, therefore, has a prejudicial interest in respect of this item of business and, under paragraph 12 of the Code, they are unable to participate and vote. However, they are able to make representations to the same extent as any member of the public before withdrawing from the meeting - paragraph 12(2)). Under Wiltshire Council's Constitution this means that they can speak for up to three minutes on the matter before withdrawing from the meeting.
15. A member with a prejudicial interest may apply to the Standards Committee for a dispensation to enable them to take part and vote on the matter. Under the 2009 Regulations 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;

The second limb b. above is not relevant to area boards as they are not politically balanced.

16. 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.
17. There are particular difficulties in area boards with a small number of members e.g Westbury or Marlborough (4 members). If two of the members have a prejudicial interest the area board will be unable to make a decision on that item as it will not have the required quorum of 3. However, it will not be possible to deal with the problem by granting a dispensation unless the legal threshold of more than 50% referred to in paragraph 14 a. above is met. The problem will have to be resolved by some other means outside the remit of the Standards Committee.
18. The Dispensations Sub-Committee has sought to grant dispensations within the legal framework to ensure that the Council is able to discharge its business efficiently and effectively through its area boards whilst at the same time maintaining public confidence in the decision-making process. Details of the terms of dispensations granted so far are set out in Appendix 2.
19. The broadest dispensation granted so far is in respect of a member of Trowbridge Area Board and covers any item of business of the Area Board relating to Trowbridge Town Council, which affects the financial position of Trowbridge Town Council (e.g. applications for grant by the Town Council) or concerns the determination of any approval, consent, licence, permission or registration in relation to the Town Council (e.g. planning applications by the Town Council). This dispensation is effective until 30 April 2013 but is subject to review in the event of any material change of circumstances.
20. On 11 May 2010 the Dispensation Sub-Committee considered 3 similar requests for dispensation and 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. In these cases the terms of the dispensation enables the councillors concerned to participate and vote in the consideration of business concerning the allocation of grant funding or the transfer of assets to the relevant parish council and will remain effective until 30 April 2011. The Sub-Committee proposed that the Standards Committee should review the dispensations granted on an annual basis.
21. Appendix 4 provides a summary of grants awarded by area boards to parish councils compared with the total amount of grant funding awarded during 2009/10.
22. Whilst it is a matter for individual councillors to satisfy themselves that they are meeting their obligations under the Code of Conduct with regard to the declaration of interests, it is important to ensure, as far as possible, in the interests of public confidence that there is consistency in the way these are dealt with by dual-hatted members. This includes making it clear to the public why such councillors are declaring interests and withdrawing

from the meeting, and the purpose and effect of a dispensation. This is something that may usefully be included in the presentation which we are preparing for area boards on standards for the Autumn.

23. We are reviewing the guidance on dual-hatted councillors and dispensations, which was issued last July. This will be circulated to councillors through the Elected Wire and published on the intranet. Staff from the Democratic Services team are involved in preparing this advice, which we expect to be ready by the end of this month. They are the front line officers who advise on matters concerning the declaration of interests at meetings of area boards and help to promote consistency of approach.
24. We are also proposing to arrange small workshops from time to time for Wiltshire Councillors who feel they need advice and assistance on particular aspects of the Code, such as dual-hatted issues.

### **Conclusion**

25. Whilst there is nothing in law to prevent a person from being a dual-hatted member, this does raise issues of potential conflict and requires careful observance of the provisions of the Code of Conduct in order to ensure that decisions on grants and similar matters are open and transparent and command the confidence of the public.
26. The Standards Committee may assist this process by the use of dispensations within the legal framework set by the regulations. It is important to maintain an overview of their use, particularly in relation to dual-hatted councillors on area boards. An annual review by the Committee of dispensations granted would be desirable. Decisions on specific requests will continue to be drawn to the attention of the Committee through the minutes of the Dispensation Sub-Committee.
27. Steps will be taken to promote consistency of approach by dual-hatted members on area boards, including the issue of guidance and training.

### **Environmental Impact**

28. None.

### **Equalities Impact**

29. None

### **Financial Implications**

30. None.

### **Legal Implications**

31. 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**

32. The Committee is asked to :

- (1) note the report and make any observations on the content;
- (2) agree that the Standards Committee should review the grant of dispensations on an annual basis.

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

### **Appendices**

Appendix 1 - Wiltshire Council Dispensation procedure

Appendix 2 - Dual-hatted members on Area Boards

Appendix 3 - Excerpt from the Code of Conduct for Members

Appendix 4 - Summary of Grants awarded by area boards