

Report to the Standards Committee

Date of meeting: 13 December 2012

Report of: Monitoring Officer

Subject: Code of Conduct and Participation at Meetings - Dispensations

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Recommendations:

- (1) That all applications seeking a dispensation be made in writing using the form attached as Appendix 1;**
- (2) That applications seeking a dispensation requiring a decision by the Standards Committee where there is insufficient time to convene a meeting be determined as follows:**
 - (a) the Monitoring Officer will contact all members of the Committee and an Independent Person by email requesting views within a set time which will enable a decision to be conveyed to the subject member within five working days of receipt of the application by the Monitoring Officer;**
 - (b) the decision will reflect the views expressed by the majority of members, subject to a minimum of five responses being received by the Monitoring Officer and in the event of an equality of differing views, the view of the Chairman of the Committee or in his/her absence the Vice-Chairman will prevail;**
- (3) That applications for a dispensation requiring a decision by the Monitoring Officer be determined within five working days of receipt;**
- (4) That all other applications for dispensation be submitted to a meeting of the Committee for determination; and**
- (5) That the Flowchart attached as Appendix 2 be published in the Council Bulletin together with a copy of the dispensation application form to make members aware of the procedures.**

Background

1. At its last meeting the Committee was advised that the Council had noted that the new Code of Conduct did not include the provisions contained in the previous Code for members having an interest to make representations before leaving a meeting where the public had the right to speak. The Council had, therefore, requested this Committee to consider recommending a standing order to provide for the circumstances under which a member could make representations of this kind.

2. The Committee considered the request and noted that Section 31 of the Localism Act 2011 made it clear that if a member was present at a meeting of the Council, its Executive or any Committee of the Executive, or of any Committee, Sub-Committee, Joint Committee or Joint Sub-Committee of the Authority, and had a disclosable pecuniary interest relating to business which was to be considered at the meeting, he/she could not:
 - (a) participate in any discussion of the business at the meeting; or
 - (b) participate in any vote on the matter at the meeting.
3. The Committee also took account of the Department for Communities and Local Government Guide for Councillors on the new standard arrangements which stated that these prohibitions applied to any form of participation, including speaking as a member of the public.
4. The Committee was advised that it would be inappropriate to have a standing order which was contrary to statute and in the event of a challenge the law would prevail.
5. Accordingly, the Committee recommended to Council that no action be taken on adopting a standing order and that in such circumstances members be required to seek a dispensation under Section 33 of the Localism Act 2011.
6. The Council at its meeting on 6 November 2012 adopting the recommendations of this Committee and agreed that the Committee should formulate a process for dealing with requests for dispensation bearing in mind the likely timescales involved.

Dispensation from Section 31 Requirements

7. Section 33 of the Localism Act 2011 allows for the granting of dispensations relieving members from the restrictions of Section 31 if it is considered that:
 - (a) without the dispensation the number of persons prohibited from participating would be so great a proportion of the body transacting the business as to impede the transaction of the business;
 - (b) without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business;
 - (c) granting the dispensation is in the interests of persons living in the authority's area;
 - (d) without the dispensation each member of the authority's Executive would be prohibited from participating in any particular business to be transacted by the Executive; or
 - (e) it is otherwise appropriate to grant a dispensation.
7. The Council has previously agreed that requests for dispensation under (b), (c) and (e) in paragraph 7 above will be determined by this Committee and those under (a) and (d) by the Monitoring Officer.

Process for Granting Dispensations

8. It is recommended that only written applications be considered.
9. It is envisaged that the issue of members seeking a dispensation to make representations is likely to arise mainly in relation to meetings considering planning applications and that requests will be made under (c) or (e) of paragraph 7 above. Such requests will need to be determined by the Committee and not the Monitoring Officer and regard needs to be had to the timescale for determining such requests. Members will often only become aware of a planning application going to a committee approximately 10 days before a meeting.
10. In view of this timescale it is considered that in some cases there will be insufficient time to convene a meeting of the Standards Committee. The approach suggested therefore in relation to dispensations to be determined by the Committee when there is insufficient time to convene a meeting, is that the Monitoring Officer will contact all members of the Committee and an Independent Person by email requesting their views on the application with a period which will enable a decision to be conveyed to the subject member within five working days from the date of receipt of the application. The decision will reflect the views expressed by the majority of members, subject to a minimum of five responses being received. If necessary, officers will telephone members to ensure that a minimum of five responses are received. In the event of an equality of differing views, the view of the Chairman of the Committee or in his/her absence the Vice-Chairman will prevail in accordance with meeting procedures which give the Chairman a second or casting vote when necessary.
11. Applications for dispensation being made under (a) and (d) of paragraph 7 above (ie the ones to be determined by the Monitoring Officer) will also be decided within five working days. The Monitoring Officer will seek the views of an Independent Person before making a decision.
12. Applications not falling within paragraphs 10 and 11 above will be submitted to a meeting of the Committee for determination.
13. A report on dispensation decisions taken under paragraphs 10 and 11 above will be made to the next available Committee meeting for formal recording and to enable members to undertake a regular review of the process.
14. It is suggested that members' attention be drawn to the agreed procedures by way of an item in the Council Bulletin including the attached Flowchart and application form.