

NORTH YORKSHIRE COUNTY COUNCIL

STANDARDS COMMITTEE

3 March 2008

Dispensation Procedure

1.0 PURPOSE OF REPORT

- 1.1 To seek Members' views on proposed amendments to the Dispensation Request Procedure.

2.0 BACKGROUND

- 2.1 At their meeting on 1 October 2007, Members of the Standards Committee considered and agreed certain amendments to the Council's Dispensation Request Procedure, in light of the new Members' Code of Conduct introduced last year.
- 2.2 At the Committee's last meeting on 14 January 2008, Members considered a report about the use made of the previously granted Community Fund Allocation dispensations. In the context of that discussion, Members of the Committee acknowledged that any Member acting under a dispensation should act carefully, ensuring that they continue to act, and appear to act, in the County Council's interests. Members also agreed that they should, in future, monitor the use made of dispensations granted by the Committee.
- 2.3 To this end, the Committee agreed that a decision-making protocol should be drawn up.

3.0 PRESENT POSITION

- 3.1 The Monitoring Officer considers that the most suitable way of promoting careful use of dispensations is within the Dispensation Request Procedure itself. It is suggested, therefore, that new paragraphs 8 and 9 be included at the end of the Procedure and a reminder note be included at the end of the application form, as indicated on the copy Procedure attached at Appendix 1.
- 3.2 Members' views are sought on the proposed amendments.

4.0 RECOMMENDATIONS

- 4.1 That subject to any comments they may have, Members approve the amendments to the Dispensation Request Procedure as set out in Appendix 1 to this report.

CAROLE DUNN
Head of Legal Services and Monitoring Officer

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Room 15

Background Documents

None

County Hall
NORTHALLERTON

20 February 2008

NORTH YORKSHIRE COUNTY COUNCIL

**Guidance to Members seeking a Dispensation
from the Standards Committee**

1.0 Introduction

1.1 Under paragraph 10 of the Code of Conduct for Members, and in accordance with the supporting statutory Guidance, a Member with a personal interest in any business of the authority also has a prejudicial interest if *all* the following conditions are met:

- a) the business is not exempt;
- b) the business affects the Member's financial position (or a regulatory matter affecting them) or that of any person or body through whom the Member has a personal interest; and
- c) the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the Member's judgment of the public interest.

1.2 Under paragraph 12 of the Code, a Member with a prejudicial interest in such business must withdraw from the room or chamber where a meeting is being held either after making representations (where appropriate and if s/he wishes to do so) or, in any other case, whenever it becomes apparent that the business is being considered at that meeting UNLESS s/he has obtained a dispensation from the Standards Committee.

2.0 Scope

2.1 Circumstances where a dispensation may be granted

2.1.1 Under Section 81 of the Local Government Act 2000 and the Relevant Authorities (Standards Committee) (Dispensations) Regulations 2002, the Standards Committee has power to grant a dispensation to a Member with a prejudicial interest in a matter, in certain circumstances (see below).

2.1.2 Any dispensation granted will allow the Member to fully participate in the matter, including speaking and voting upon it.

2.1.3 The law prescribes that the Standards Committee may only grant a dispensation where:

- a) the transaction of business would otherwise be impeded because:
 - (i) more than 50% of the Members entitled or required to participate would not be able to; or

- (ii) the County Council would not be able to comply with "any duty which applies to it under section 15(4) of the Local Government and Housing Act 1989" (**NB: see paragraph 3.1.2 below**);
 - b) the Member has submitted to the Standards Committee a written request for a dispensation, explaining why it is desirable; and
 - c) the Standards Committee concludes, having regard to the above, the content of the application in (b) and all the other circumstances of the case, that it is appropriate to grant the dispensation.
- 2.1.4 The Standards Committee will need to balance the public interest in preventing Members with prejudicial interests from taking part in decisions, against the public interest in decisions being taken by a reasonably representative group of Members of the authority (Standards Board Guidance May 2007).

2.2 **Restrictions on the granting of a dispensation**

- 2.2.1 A dispensation cannot be granted, in respect of participation in business, for more than four years.
- 2.2.2 Dispensations cannot be granted to allow:
- a Member of an Overview and Scrutiny Committee to participate in the scrutiny of a decision of, or action taken by, another committee of which they are also a Member; nor
 - an individual Member of the Executive to exercise executive functions solely, where they are prohibited by the Code from doing so.

3.0 **Guidance to Members Requesting a Dispensation**

- 3.1 If a Member believes s/he has a personal interest in a matter which is also prejudicial s/he cannot take part and vote without a dispensation.
- 3.1.1 Members can seek a dispensation if they think that more than 50% of the particular decision making body eg 37 members of full Council or 5 Members of the Executive, would be prevented from taking part.
- 3.1.2 A dispensation can also be sought if the Council would be unable to allocate seats in accordance with the rules relating to political balance: this would, however, only occur at the time that allocations were made to political groups and thereafter committees and not simply that political balance would not be maintained thereafter. This was not, however, the intention behind the Dispensation Regulations. The Standards Board noted in its Guidance (May 2007) that:

.... there is currently a problem with the drafting of the Dispensation Regulations. The political balance criterion is linked to an authority being unable to comply with its duty under section 15(4) of the Local Government and Housing Act 1989. This duty requires the appointment of committees that reflect the overall political balance of an authority. However, the duty does not arise in relation to individual meetings either of the authority or its

*committees. For this reason it is difficult to envisage circumstances in which the criterion would be met. **Until such time as the appropriate amendments are made to the Regulations it is not likely that dispensations would be granted on the basis of the political balance criterion.***

3.1.3 If either of the above criteria applies then a Member may wish to consider applying for a dispensation from the Standards Committee. In those circumstances it would be advisable to discuss the proposed application with either the Monitoring Officer or the Head of Committee Services.

3.2 Requests for a dispensation should be made individually, using the form attached as Appendix 1, which is available from the Monitoring Officer or the Head of Committee Services. If the Member does not make an application the Standards Committee cannot consider a dispensation to that Member. This is so even if several other Members are affected by the same issue. Should each such Member wish to receive a dispensation then they must each submit an application on their own behalf using the form.

4.0 **Completing the Application Form**

4.1 The Standards Committee must be satisfied that there is a reason for dispensation ie that more than 50% of Members or the allocation of seats to political groups will be affected if a dispensation is not granted. They must also be satisfied that a Member has made an application in accordance with the Regulations. The Committee will then consider the content of the application and all the other circumstances of the case. In order for the Committee to properly consider these issues the Member should provide the following information:

- Details of the personal interest of the Member; if it involves the membership of another body, Members should outline the purpose of the body and its relationship, if any, with the County Council;
- Details of the decision or decisions in respect of which the Member will have a prejudicial interest;
- If appropriate, the date of the meeting and the item number of any particular decision due for consideration;
- The name of the relevant Council Officer who usually advises Members about the matter under consideration;
- Members should indicate the length and scope of the dispensation being sought: a dispensation cannot be longer than four years and it can be limited to a particular decision or apply to a number of decisions relating to the same issue;
- Finally, the Member will need to indicate why he or she considers that a dispensation should be given.

5.0 **Submitting the Application**

5.1 Once completed, the form should be sent to the Monitoring Officer and the Head of Committee Services.

5.2 The Head of Committee Services will then arrange for the Standards Committee to consider the application at its next meeting or, if the matter is urgent and will not wait until then, at a specially convened meeting of the Standards Committee.

5.3 The Member will be notified by the Head of Committee Services of the date upon which the Standards Committee will consider the request.

6.0 **Consideration of the Dispensation Request by the Standards Committee**

6.1 At the appointed meeting, the completed application form will be considered by the Standards Committee, along with any other relevant information, in deciding whether or not to grant a dispensation to the Member.

6.2 The Standards Committee may seek information from the relevant Officer and may request the attendance of the Member to assist in understanding the nature of the relevant interest.

6.3 Once the Standards Committee has decided whether or not to grant a dispensation, the Head of Committee Services shall inform the Member as to the outcome of his/her application.

7.0 **Recording a Dispensation**

7.1 If the Standards Committee decides to grant a dispensation to the Member, then the Head of Committee Services will record, in writing, its existence, duration and nature.

7.2 The Monitoring Officer will ensure that a copy of the record is kept with the relevant Member's entry in the Register of Members' Interests.

8.0 **Monitoring Dispensations**

8.1 The Standards Committee will monitor the use made of dispensations granted by it.

9.0 **Acting under a Dispensation**

9.1 When acting under a dispensation granted to them by the Standards Committee, Members must at all times act, and appear to act, in the Council's best interests.

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NORTH YORKSHIRE COUNTY COUNCIL

Request to the Standards Committee for a Dispensation

Name of Member seeking dispensation:

In respect of which meeting(s)?
(include dates, where possible)
.....

In respect of what business? *(If applicable, include full details of the agenda item or other matter)*

NB: PLEASE NOTE that dispensations cannot be granted to allow:

- *a Member of an Overview and Scrutiny Committee to participate in the scrutiny of a decision of, or action taken by, another committee of which they are also a Member; nor*
- *an individual portfolio holder to take executive decisions where they have delegated powers to do so but are prevented from taking the decision because of a prejudicial interest.*

Name of the Relevant Officer: *(Please indicate the name of the officer who usually presents reports on the matter for which a dispensation is sought).*

Desired length of dispensation:days/weeks/months/years
(Please note the maximum length of a dispensation is four years)

Ground(s) for application: *(Please tick the relevant box)*

- (a) more than 50% of the Members entitled to participate affected:
- (b) allocation of seats to committees under political balance principles affected:

Details of your prejudicial interest:

Please set out full details of your personal interest in the business concerned and why you believe that interest to be prejudicial. Please continue on a separate sheet if necessary:

Reasons for seeking a dispensation:

Please set out full reasons why it is desirable for the Standards Committee to grant you a dispensation in respect of the above prejudicial interest. Please continue on a separate sheet if necessary:

PLEASE REMEMBER THAT WHEN ACTING UNDER A DISPENSATION, MEMBERS MUST AT ALL TIMES ACT, AND APPEAR TO ACT, IN THE COUNCIL'S BEST INTERESTS.

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Signed:

Dated:

TO: **Carole Dunn**, Monitoring Officer
Stephen Knight, Head of Committee Services