

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:

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a) the business is not exempt;

b) the business affects the Member's financial position (or a regulatory matter *in relation to* them) or that of any person or body through whom the Member has a personal interest; and

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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 Standards Committee (Further Provisions) (England) Regulations 2009*, the Standards Committee has power to grant a dispensation to a Member with a prejudicial interest in a matter, in certain circumstances (see below).

Deleted: the Relevant Authorities (Standards Committee) (Dispensations) Regulations 2002

2.1.2 Any dispensation granted will allow the Member to fully participate in the matter, including speaking and voting upon it. *Dispensations may also be granted for speaking only, as well as for speaking and voting. However, the Council's current Code of Conduct relaxed the provisions for restricting Members with a prejudicial interest from speaking, provided the public were also able to speak at that meeting. Therefore, the need to request a dispensation to speak only is likely now to be limited to circumstances where the public do not have the right to speak.*

2.1.3 The law prescribes that the Standards Committee may grant a dispensation in the following circumstances;

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a) where the transaction of business of the Council would, but for the grant of any other dispensation in relation to that business, on each occasion on which the dispensation would apply, otherwise be impeded by, or as a result of, the mandatory provisions because—

(i) the number of Members of the Council prohibited from voting on the business of the Council at a meeting exceeds 50% of those Members that, but for the granting of any dispensations relating to that business, would otherwise be entitled to vote on that business; or

(ii) the number of Members prohibited from voting on the business of the Council at a meeting would, but for the granting of any dispensations relating to that business, upset the political balance of that meeting to such an extent as to prejudice the outcome of voting in that meeting;

The Standards Committee must ignore any dispensations which have already been given to others at the meeting to decide whether either of these criteria apply.

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 any other relevant circumstances of the case, that it is appropriate to grant the dispensation.

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2.2 Criteria to be considered in respect of dispensation requests

2.2.1 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).

2.2.2 For dispensation requests under paragraph 2.1.3 (a) (ii), the Committee will also need to balance the prejudicial interest of the Member seeking the dispensation to vote on an item of business, against the potential effect on the outcome of the vote if the Member is unable to do so.

2.2.3 Other criteria to be considered in respect of dispensation requests are set out below.

2.2.4 Is the nature of the Member's interest such that allowing them to participate would not damage public confidence in the conduct of the Council's business?

a) it is unlikely that it would be appropriate to grant a dispensation to a Member who has a prejudicial interest arising as a result of an effect on their personal financial position or on that of a relative. The adverse public perception of the personal benefit to the Member would probably outweigh any public interest in maintaining the political balance of the committee making the decision. This is

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<#>more than 50% of the Members entitled or required to participate would not be able to; or ¶

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<#>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);¶

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especially where an authority has well-established processes for Members on committees to be substituted by Members from the same political party.

- b) However, the prejudicial interest could arise from the financial effect the decision might have on a public body of which they are a member. In such cases, it is possible that any public interest in maintaining the political balance of the committee making the decision might be given greater prominence.

2.2.5 Is the interest common to the Member and a significant proportion of the general public?

- a) For example, the Member might be a pensioner who is considering an item of business about giving access to a local public facility at reduced rates for pensioners. Some cautious Members might regard this as a possible prejudicial interest. However, as a significant proportion of the population in the area are also likely to be pensioners, it might be appropriate to grant a dispensation in these circumstances.

2.2.6 Is the participation of the Member in the business that the interest relates to justified by the Member's particular role or expertise?

- a) For instance, a Member might represent the Council on another public body (eg a police authority) and have particular expertise in the work of that body. Therefore it may be appropriate for that Member to be allowed to address the decision-making body, even where there is no right for the public to do so. This would mean that the body would have the benefit of the Member's expertise before making a decision which would benefit it financially.

2.3 Restrictions on the granting of a dispensation

2.3.1 A dispensation cannot be granted, in respect of participation in business, for more than four years.

2.3.2 Dispensations cannot be granted to allow:

- a Member to vote on a matter at a meeting of an Overview and Scrutiny Committee relating to a decision made by any body of which s/he was a member at the time the decision was taken; 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 If either of paragraphs 2.1.3 (a) (i) or (ii) 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 any of her team) or the Principal Officer Democracy and Governance.

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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. ¶

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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:¶

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.... 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 (... [1])

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- 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 Principal Officer Democracy and Governance. 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 a dispensation ie that ~~the number of Members prohibited from voting exceeds 50% of those entitled to vote or will upset the political balance of that meeting so as to prejudice the outcome of voting~~ 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:

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- 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(s) of the meeting(s) and the item number(s) 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.
- 5.2 ~~Democratic 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 ~~Democratic Services~~ of the date upon which the Standards Committee will consider the request.

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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 ~~Monitoring Officer~~ shall inform the Member as to the outcome of his/her application.

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Democracy and Governance

7.0 **Recording a Dispensation**

- 7.1 If the Standards Committee decides to grant a dispensation to the Member, then the ~~Monitoring Officer~~ 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.

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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.

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 to vote on a matter at a meeting of an Overview and Scrutiny Committee relating to a decision made by any body of which s/he was a member at the time the decision was taken; 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.***

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[Empty box for details]

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).

[Empty box for name]

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 ~~vote~~ affected:
- (b) ~~the number of Members affected will upset the political balance of that~~

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meeting so as to prejudice the outcome of voting:

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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.

Signed:

Dated:

TO: **CAROLE DUNN**, Monitoring Officer

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Principal Officer Democracy and
Governance

- 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.***