

Item 5

REPORT TO STANDARDS COMMITTEE

6th JULY 2006

REPORT OF SOLICITOR TO THE COUNCIL AND MONITORING OFFICER

PROCEDURE FOR GRANTING DISPENSATIONS

1. SUMMARY

1.1 This report outlines the procedure and regulations relating to the granting of dispensations. A Standards Committee has the authority, as set out in The Relevant Authorities (Standards Committee) (Dispensations) Regulations 2002, to grant dispensations to Members and Town and Parish Councillors, only in certain circumstances. Dispensations can only be granted by the Council's Standards Committee acting upon a written request from a Member.

2. RECOMMENDATIONS

2.1 That the Standards Committee be appraised of the report and the procedure and regulations be noted and followed.

2.2 That Borough, Parish and Town Councillors be informed of these arrangements.

3. DETAIL

3.1 Under the mandatory provisions of the Model Code of Members' Conduct a Member with a prejudicial interest in a matter is precluded from participating in the consideration of that matter. However, in certain circumstances a Member may apply to the Standards Committee for a dispensation enabling him/her to participate. The grant of a dispensation operates so as to prevent the Member's participation from being a breach of the Code.

3.2 Dispensations can only be granted in limited circumstances because it would be inappropriate for a Member to apply for a dispensation every time they had a prejudicial interest.

3.3 **Circumstances in which Dispensations may be Granted:** The Relevant Authorities (Standards Committee) (Dispensations) Regulations set out limited circumstances in which dispensations may be granted.

3.4 Section 3(1)(a) and (b) of the Regulations details the only circumstances in which Standards Committees may grant a dispensation. Section 3(1)(a) refers to the transaction of business of the authority being impeded by or as a result of the mandatory provisions of the Code because: –

- (a) the number of members that are prohibited from taking part is more than 50 per cent of those members entitled or required to participate because of a prejudicial interest, or;
- (b) the authority is unable to meet its duty to comply with the political balance principles under section 15(4) of the Local Government and Housing Act 1989, due to prejudicial interests.
- 3.5 Section 3(1)(b) refers to a Member submitting a written request for a dispensation to the Standards Committee explaining why it is desirable for the dispensation to be granted.
- 3.6 The political balance requirements have been disapplied to Development Control Committees and accordingly the political balance circumstance under which a dispensation can be granted does not apply to the consideration of development control matters.
- 3.7 For Parish and Town Councils, the Standards Committee will be responsible for granting dispensations. The request for dispensation must be submitted in writing and agreed by the Standards Committee before the meeting where the dispensation is required.
- 3.8 **When Dispensations should not be granted:** A dispensation can never be granted in the following circumstances, where:
- A Member is prohibited from participating in the consideration of the matter at a meeting of an Overview and Scrutiny committee or Sub-Committee where that consideration relates to any decision made or action taken by any of the Council's Committees, Sub-Committees, joint Committees or joint Sub-Committees of which he or she may also be a Member; or
 - Where a Member of the Cabinet is prohibited from exercising functions, which would otherwise be discharged, solely by him or her.
 - Where the dispensation would conflict with the statutory general principles which underlie the Code of Members' Conduct:
 - i. *Selflessness*: Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.
 - ii. *Honesty and integrity*: Members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.
 - iii. *Objectivity*: Members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.
 - iv. *Accountability*: Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

- v. *Openness*: Members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.
- vi. *Personal Judgement*: Members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.
- vii. *Respect for Others*: Members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers, and its other employees.
- viii. *Duty to Uphold the Law*: Members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.
- ix. *Stewardship*: Members should do whatever they are able to do to ensure that their authorities use their resources prudently and in accordance with the law.
- x. *Leadership*: Members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.

3.9 A dispensation should not be granted where the dispensation would conflict with the overriding requirements of the Local Code of Conduct.

3.10 Consideration must take account of any legal requirement or statutory guidance.

3.11 Procedure for Granting Dispensations:

- 1) All requests for a dispensation must be submitted, in writing, as soon as practicable to the Monitoring Officer, but not less than 3 working days before the meeting.
- 2) The Monitoring Officer will forward the request for dispensation to all Members of the Standards Committee and the dispensation request will be an item on the agenda of the next scheduled meeting of the Standards Committee.
- 3) The Monitoring Officer will then confirm, in writing, to the Member making the request, the decision of the Standards Committee.
- 4) A dispensation may not last for more than four years from the date of the giving of the dispensation.

3.12 **How to apply for a dispensation:** If a Member wishes to seek a dispensation to enable him or her to participate in the consideration of a matter from which he/she would be excluded by the Code, he/she should write to or e-mail the Monitoring Officer requesting a dispensation and explaining why it is desirable for a dispensation to be granted.

3.13 **Guidance from the Standards Board on how a Standards Committee can decide upon a dispensation request:** Once the

Standards Committee has taken into account the circumstances that exist under section 3(1) (a) and (b) of the Regulations and any other relevant circumstances, the Standards Committee may consider that a dispensation should be granted.

- 3.14 The section 3(1) (a) and (b) Regulations give discretion to the Committee to determine the extent of any dispensation. For example, the Committee may consider that it is appropriate that the dispensation allows the Member to either speak or not vote, or to fully participate and vote.
- 3.15 The Standards Board suggest that the Regulations give the Standards Committee the discretion to determine how long the dispensation should apply, although it cannot be longer than four years.
- 3.16 The Standards Committee can refuse to grant a dispensation. The Regulations allow discretion rather than imposing an obligation to grant a dispensation.
- 3.17 **Can a General Dispensation be Granted?** The general view of the Standards Board is that the Regulations do not make provisions for general dispensations to be granted. As outlined above, the Regulations set out clearly limited circumstances in which Members may be granted dispensations.
- 3.18 **Records of Dispensations:** The Standards Committee must ensure that the existence, duration and nature of any dispensation is recorded in writing and that a record is kept with the Register of Interests established and maintained under section 81(1) of the Local Government Act 2000.

4. RESOURCE IMPLICATIONS

- 4.1 No specific financial implications have been identified.

5. CONSULTATIONS

- 5.1 The Council's Management Team has considered this report.

6. OTHER MATERIAL CONSIDERATIONS

- 6.1 All material considerations have been taken into account in the contents of this report. In particular, risks may arise unless Members of Council are fully appraised on standards matters.

7. OVERVIEW AND SCRUTINY IMPLICATIONS

- 7.1 None apply.

8. LIST OF APPENDICES

8.1 Appendix 1 - Dispensation Flowchart.

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Wards: N/A

Key Decision Validation: N/A

Background Papers

Local Authorities (Model Code of Conduct) (England) Order 2001
Local Government Act 2000 s.81 (5)
Relevant Authorities (Standards Committee) (Dispensations) Regulations 2002
Statutory Instrument 2002 No. 339
Standards Board Bulletin, Issue 7, November 2002
Standards Committee Report – 27th Jan 2003 – ST.7/02
Standards Committee Report – 4th September 2002 – ST.5/01
MO8 – Ethical framework from the O.T.L.R and Dispensations
MO12 – Dispensations Procedure

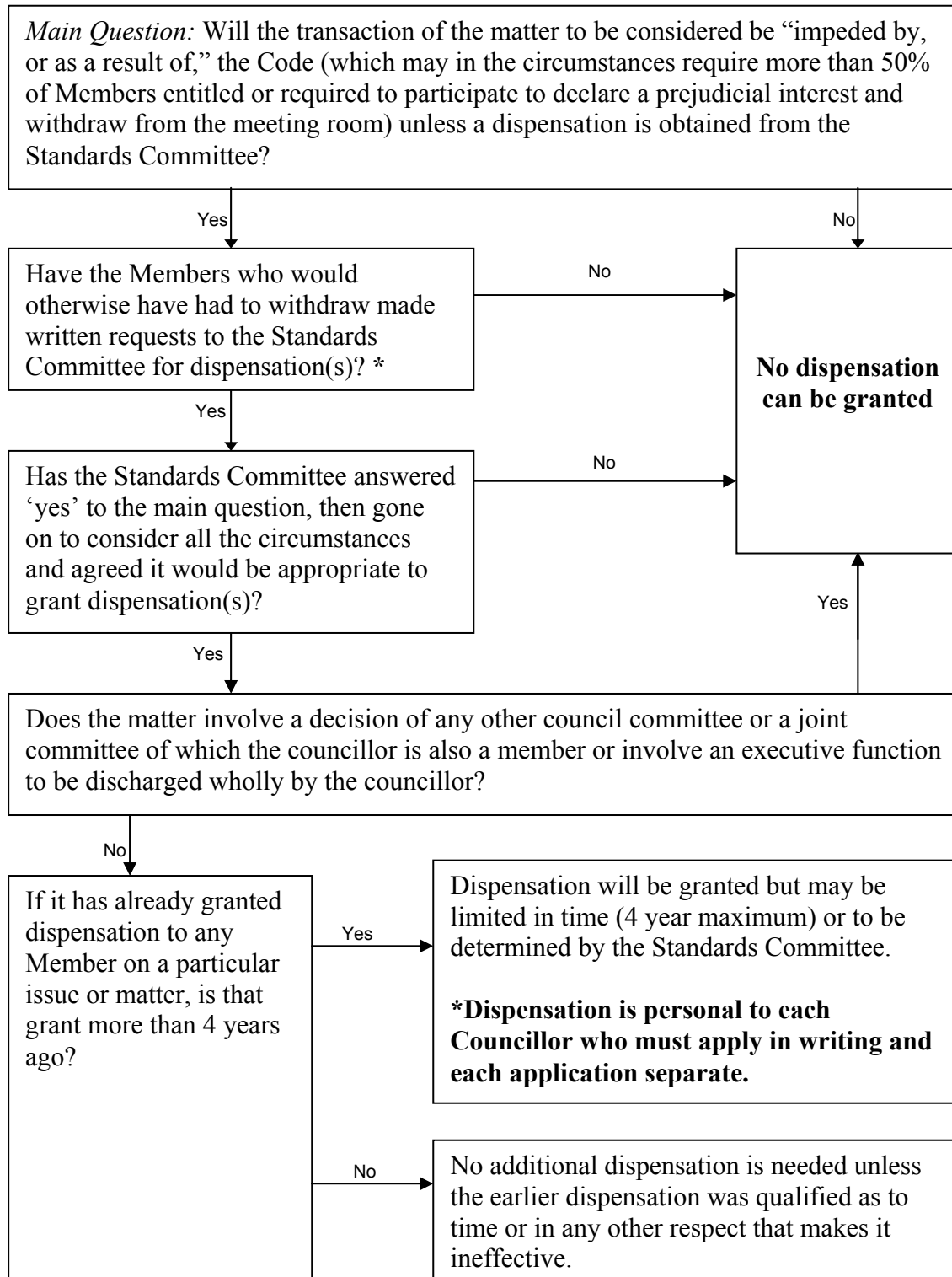
Examination by Statutory Officers

Not

	Yes	Applicable
1. The report has been examined by the Council's Head of the Paid Service or his representative	<input type="checkbox"/>	<input type="checkbox"/>
2. The content has been examined by the Council's S.151 Officer or his representative	<input type="checkbox"/>	<input type="checkbox"/>
3. The content has been examined by the Council's Monitoring Officer or his representative	<input type="checkbox"/>	<input type="checkbox"/>
4. The report has been approved by Management Team	<input type="checkbox"/>	<input type="checkbox"/>

Dispensation Flowchart: The Relevant Authorities (Standards Committee) (Dispensation) Regulations 2002.

If more than half your councillors are coded “out” on a particular item(s) of business, they should consider applying in writing to the Council’s Standards Committee via the Monitoring Officer for a dispensation.



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