

# Executive Summary and Recommendations

**Title of Report:**    **Dispensations from the Code of Conduct**

**Date:**    **14 July 2009**

## **Summary of this Report**

This report summarises recent Guidance from the Standards Board for England on dispensations, and recommends the adoption of a protocol for the processing and consideration of applications for dispensations from the Code in future. It is suggested that such applications be considered by a Sub-Committee, and that the terms of reference of the Committee's Sub-Committees be amended accordingly.

## **Recommendations**

1. That the report be noted.
2. That the Protocol set out at Appendix 2 be approved for use when applications are made in future and that a copy of the protocol be provided to all members and included in the Code of Governance
3. That the terms of reference of the Committee's Sub-Committees be amended by the addition of the following paragraph:

"To consider applications for dispensation from the Code of Conduct in accordance with the Protocol approved by the Standards Committee"



City of Westminster

# Standards Committee Report

Item No:

Date:

6 July 2009

Classification:

For General Release

Title of Report:

Dispensations from the Code of Conduct

Report of:

The Head of Legal Services

Wards involved:

N/A

Policy context:

High Ethical Standards

Financial summary:

There are no financial implications

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## **1. Introduction**

- 1.1 The Committee most recently considered applications for dispensations from the Members' Code of Conduct at its meeting in February. When approving those applications, the Committee asked that a report be submitted to a future meeting "setting out the various options available in these circumstances, including the implications for the consideration of planning applications should applications for dispensation be refused. The further report to include a protocol for the processing and consideration of applications for dispensation from the Code".
- 1.2 Since February, and whilst this report was in draft, there have been two significant developments. Firstly, The Standards Committee (Further Provision)(England) Regulations 2009 came into effect on the 15 June, clarifying the grounds on which dispensations to members may be granted. Secondly, on 3 July 2009 the Standards Board for England issued formal guidance on this issue for the first time. A copy of the Board's Guidance is attached as Appendix 1.

## **2. Background**

- 2.1 As the Committee is aware, some provisions in the Code of Conduct for Members require members not to participate in decision-making in certain circumstances. In particular, where a member has a personal interest that is also a prejudicial interest in a matter being discussed at a meeting, he must not only declare that interest, but must also leave the room (unless members of the public are allowed to make representations, give evidence or answer questions about the matter, by statutory right or otherwise, in which case the member can attend the meeting for that purpose, but must leave having spoken). A personal interest under the Code is any interest which must be registered, or any interest "where the well-being or financial position of you, members of your family, or people with whom you have a close association, is likely to be affected by the business of your authority more than it would affect" the majority of the inhabitants of the ward affected by the decision. A prejudicial interest is a personal interest which
  - (a) does not fall into one of the exempt categories;
  - (b) affects the member's financial interests or relates to a licensing or regulatory matter; and
  - (c) is one which a member of the public, who knows the relevant facts, would reasonably think is so significant that it is likely to affect the member's judgement of the public interest.
- 2.2 The definition of personal interest is broad, and occasions can arise where so many members would have an interest in a matter under discussion that the transaction of the Council's business would be impeded. In such cases there is scope for a dispensation to be granted, so that participation at a meeting which would otherwise constitute a breach of the Code is permitted.

- 2.3 In Westminster, the need for dispensation has most frequently arisen where planning or licensing applications are submitted by a member of the Majority Group on the Council, by a relative of such a member, or by a person who is otherwise a member of the Majority Party. When such an application is made it will normally need to be determined at member level rather than by officers – officers do not have the delegated power to determine a planning application submitted by or on behalf of a member of the Council (so that such applications are determined at a public meeting) and licence applications may not be determined by officers if they are the subject of representations (if they are not they must be granted and the Council has no discretion). Members of the Majority Party usually regard themselves as a “close associate” of fellow members – consistently with guidance from the Standards Board which advises that any person with whom you are in either regular or irregular contact over a period of time and who is more than an acquaintance is a close associate – and therefore as having a personal interest in such an application. It is usually considered, applying a proper degree of caution, that such an interest may be a prejudicial one, since none of the exemptions apply, it is a matter related to licensing or a regulatory function, and a reasonable member of the public in possession of all the facts, may consider that a member’s judgment of the public interest may be affected if the interests of a close associate are at stake.
- 2.4 If this approach is applied, the effect is that the Planning Applications Sub-Committee or Licensing Sub-Committee determining the application will be left inquorate. A Planning Applications Sub-Committee must be politically “balanced”, and its four members will comprise three Majority Party members and one Minority Party member. A Licensing Sub-Committee need not as a matter of law be politically “balanced”, but will normally have two Majority Party members out of the total membership of three. In each case (planning and licensing) the quorum is two. Thus the need for dispensations arises.

### **3. The Legal Position**

- 3.1 Until recently, provision for dispensations was contained in The Relevant Authorities (Standards Committee)(Dispensations) Regulations 2002. The 2002 Regulations provided that a Standards Committee may grant a dispensation to a member when
- (a) the transaction of the business of the authority would, 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 authority that are prohibited from participating in the business of the authority exceeds 50% of those members that are entitled or required to so participate; or
    - (ii) the authority is not able to comply with any duty which applies to it under section 15(4) of the Local Government and Housing Act 1989

(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 conclude that having regard to the matters mentioned in paragraph (a) above, the content of the application made pursuant to paragraph (b) above, and to all the other circumstances of the case, it is appropriate to grant the dispensation.

3.2. There are various problems with the drafting and interpretation of the 2002 Regulations, which it is fortunately no longer necessary to consider. They have been revoked with effect from 15 June 2009, and replaced with provisions contained in Regulations 17 to 19 of The Standards Committee (Further Provision) (England) Regulations 2009. The 2009 Regulations provide that a Standards Committee may grant a dispensation in the following circumstances:-

(a) where the transaction of business of the authority 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 [ie the Code of Conduct] because –

(i) the number of members of the authority prohibited from voting on the business of the authority 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 authority 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;

(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 that having regard to the matters mentioned in sub-paragraph (a) above, the written request made pursuant to sub-paragraph (b) above, and to any other relevant circumstances of the case, it is appropriate to grant the dispensation.

3.3 The effect of the changes effected by the 2009 Regulations is that it is now clear that when considering whether more than 50% of members are disqualified from voting one considers the members “at a meeting”, not all members of the Council, and that the second test is satisfied if, at a meeting, the number of members disqualified from voting would upset the political balance “to such an extent as to prejudice the outcome of voting”.

- 3.4 There are exceptions to the power to give dispensations, which are the same now as under the 2002 Regulations. Members cannot be given dispensations to allow them to vote on policy and scrutiny committees about decisions made by any body they were a member of at the time the decision was taken. And a dispensation cannot be given to allow a Cabinet member with a prejudicial interest in a matter to take an executive decision about it on their own.
- 3.5 Whilst the clarification brought about by the new Regulations is welcome, the Council's practice to date is unaffected. The new Regulations do not in themselves require any change to the way in which dispensations have usually been dealt with. No requests for dispensations in the two excepted areas have ever been received.

#### **4. The Standards Board for England Guidance**

- 4.1 On the 3 July the Standards Board issued formal guidance on dispensations. That Guidance is attached as Appendix 1. This is the first time the Board has given guidance on this subject, and the guidance was issued without any prior consultation with the City Council.
- 4.2 It is noteworthy that the guidance recommends that the process for making requests for dispensations, the criteria that will be applied and the process that will be followed when the request is considered should all be clearly understood by those concerned, and that standards committees should set all this out and make it available to members. This is consistent with the Committee's decision at its February meeting referred to at paragraph 1.1 above. A draft protocol for dealing with dispensations is attached at Appendix 2 for the Committee's comments and approval. The protocol has been drafted taking into account the newly-published guidance.
- 4.3 The guidance does not expressly address one of the concerns raised by members in February, namely the circumstances in which an application for a dispensation may be refused, and how (in that case) the application for planning permission would be determined if it was. It is clear from the guidance that the fact that an application meets the legal criteria for grant does not mean that the application should be automatically granted. It must follow that in such a case the matter in relation to which the dispensation is sought would have to be determined without the participation of the members in question. In a case where the matter is to be decided by a Committee which must be politically balanced this will present a problem if all the members of one party are disqualified. (Although in the case of a planning application submitted by a member it would be legally possible for the application to be determined by an officer under delegated powers, that would be an undesirable and unfortunate consequence of the working of the Code). It is suggested therefore that whether the decision in question could be taken by other means, and if so how, should be a consideration to be taken into account when considering whether a dispensation is granted. This consideration is included at the second bullet point of paragraph 5 in the draft Protocol attached.

- 4.4 Generally speaking the Protocol, if agreed, is likely to formalise the process currently followed, rather than effect substantial change. It is recommended to the Committee on that basis.
- 4.5 The Guidance points out that applications for dispensation may be considered by a Standards Sub-Committee as well as by the Standards Committee itself. It does seem that applications could more conveniently and practically be dealt with by one of the Committees three Sub-Committees, and it is recommended that the terms of reference of each Sub-Committee be extended to allow that if the Committee agree.

## **5. Financial Implications**

- 5.1 There are no financial implications arising from this report.

If you wish to inspect one of the background documents please contact Peter Large: 7641 2711.

## **Background Papers**

- None.