

STANDARDS COMMITTEE REPORT – 25th March 2010
Requests for Dispensation

Agenda Item 4

Background Papers: Standards for England Guidance on Dispensations
Corporate Implications: Please refer to table at end of report
Options: None arising directly from this report

Risks: None arising directly from this report

Executive Summary

Standards for England issued new guidance on dispensations last year which was reported to the Standards Committee on 23rd July 2009. Enquiries have been made recently by a parish council as to the process for dispensations and this report suggests how the Standards Committee could consider requests in the future.

Decision

That:

- (a) the Standards Committee adopt the criteria for granting dispensations attached as an Appendix to the report;
- (b) the Standards Committee establish a Sub-Committee to consider requests for dispensations such a Sub-Committee in each case to be drawn from a panel comprising the whole of the membership of the Standards Committee and to comprise a minimum of three Members to include an Independent Member who shall Chair the Sub-Committee, an Elected Member of Braintree District Council and a Parish Representative when the request for dispensation(s) is in respect of or includes a Town or Parish Councillor(s); and
- (c) the quorum for the Dispensation Sub-Committee shall be 3 Members.

Corporate Implications	
Financial:	None
Legal:	The Local Government Act 2000 states that standards committees can grant dispensations for members allowing them to speak and vote at a meeting when they have a prejudicial interest..
Equalities & Diversity:	Any issues are addressed within the report
Customer Impact:	The decision is intended to promote public confidence in local democracy
Environment & Climate Change:	Not Applicable
Consultation/Community Engagement:	Not Applicable
Key Decision:	No
Public/Private Report:	Public
Officer Contact:	Sharon Lowe
Designation:	Monitoring Officer
Ext No:	2629
Email:	Sharon.lowe@braintree.gov.uk

- 1.1 The Standards Committee (Further Provisions) (England) Regulations 2009, came into force in June 2009 and were intended to clarify the grounds on which Standards Committees may grant dispensations to Local Authority Members.
- 1.2 Dispensations may be granted for speaking only or for speaking and voting.
- 1.3 In the case of Town and Parish Councils a dispensation may only be granted where more than 50% of the Members who would be entitled to vote at a meeting are otherwise prohibited from voting.
- 1.4 In the case of elected Members of Braintree District Council seeking a dispensation, the criteria which must first be satisfied are as follows:-
 - Where more than 50% of the Members who would be entitled to vote at a meeting are otherwise prohibited from voting or;
 - Where the number of Members that are prohibited from voting at a meeting would upset the political balance of the meeting to the extent that the outcome of voting would be prejudiced.
- 1.5 There are two cases in which a dispensation may not be granted even if the above criteria are met namely:-
 - To enable a Member to vote in an Overview & Scrutiny Committee about decisions made by any body they were a member of at the time the decision was taken;
 - To allow a Cabinet Member with a prejudicial interest to take an executive decision about it on their own.
- 1.6 The Standards Board's guidance suggests that authorities should adopt criteria to assist them in determining whether a dispensation should be granted in a particular case and list a range of considerations which might be taken into account. Draft criteria together with a pro-forma application and guidance notes for dispensation are attached as an Appendix to the report.
- 1.7 The guidance also highlights the fact that the Standards Committee may appoint a Sub-Committee to consider requests for dispensation. Since it is likely that any request for a dispensation would need to be dealt with as a matter of some urgency it would seem sensible to appoint a Sub-Committee to undertake this function. It is recommended that such a Sub-Committee should be drawn from a panel of all members of the Standards Committee in the same way as the Allegations, Allegations Appeal and Hearing Sub-Committees are currently constituted to enable maximum flexibility.

Criteria for Granting Dispensations

In determining whether to grant a request for a dispensation regard shall be had to the following:

1. **Whether the nature of the Members interest is such that to allow them to participate would not damage public confidence in the conduct of the authority's business.** *For example a dispensation would not normally be granted to a Member who has a prejudicial interest arising as a result of an effect on their personal financial position or that of a relative or close associate but would be more likely to be granted where the prejudicial interest arose from the financial effect the decision might have on a public body of which he or she was a Member.*
2. **Whether the interest is common to the Member and a significant proportion of the general public?** *If this is the case, a dispensation is more likely to be granted.*
3. **Is the participation of the Member in the business that the interest relates to justified by the Member's particular role or expertise?**
4. **Is the business that the interest relates to about a voluntary organisation or a public body which is to be considered by an Overview and Scrutiny Committee? And is the Member's interest not a financial one?** *In such circumstances it is likely that a dispensation will be granted.*

APPLICATION FOR DISPENSATION

To: The Standards Committee
c/o Sharon Lowe, Monitoring Officer
Braintree District Council
Causeway House
Bocking End
Braintree
Essex
CM7 9HB

Full name of Member seeking dispensation <i>NOTE: the application must be submitted by the individual Member seeking the dispensation</i>	
Name of Council	
Nature of interest for which dispensation is sought	
Nature and duration of dispensation sought <i>NOTE: dispensations may be granted for speaking only or for speaking and voting. They may be granted to enable a Member to speak only or to speak and vote at a particular meeting or may be granted for a specified period of time (up to a maximum of 4 years)</i>	
Reasons why you think the Standards Committee should grant the request for a dispensation (see over for grounds under which a dispensation can be sought). <i>NOTE: the Standards Committee has a discretion whether or not to grant the request for a dispensation</i>	

Signed: _____

Dated: _____

NOTE:

A Standards Committee may grant a dispensation to a Member or co-opted Member of an authority in the following circumstances:-

- Where more than 50% of the Members who would be entitled to vote at a meeting are prohibited from voting OR
- Where the number of Members that are prohibited from voting at a meeting would upset the political balance of the meeting to the extent that the outcome of voting would be prejudiced.
(THIS GROUND ONLY APPLIES TO MEMBERS OF THE DISTRICT COUNCIL).

BRAINTREE DISTRICT COUNCIL

Guidance to Members seeking a Dispensation from the Standards Committee

When might it be appropriate to request a dispensation?

The Code of Conduct provides that if an elected or co-opted Member has what is described in the code as a prejudicial interest they should not speak or vote on the matter and should leave the meeting whilst the matter is discussed.

Principal authorities (which includes Braintree District Council) also have a provision in their code which enables members to make representations to the meeting where they would otherwise have a prejudicial interest where a member of the public has a similar right. However they should still leave the meeting before the vote is taken. This problem is not mandatory in the case of Town and Parish Councils and your Town and Parish Council may or may not have adopted it.

However the legislation provides that even where you have a prejudicial interest you may, in certain circumstances, request a dispensation from the Standards Committee. You can ask for the dispensation either just to speak at the meeting or to speak and to vote.

What are the circumstances in which I ask for a dispensation?

In the case of an elected or co-opted Member of Braintree District Council you can request a dispensation in the following circumstances:

- where more than 50% of the Members who would be entitled to vote at a meeting would otherwise be prohibited from voting or;
- where the number of Members that are prohibited from voting at a meeting would upset the political balance of the meeting to the extent that the outcome of voting would be prejudiced.

In the case of an elected or co-opted Member of a Town or Parish Council you can request a dispensation only

- where more than 50% of the Members who would be entitled to vote at a meeting would otherwise be prohibited from voting.

Does the Standards Committee have to grant the request for a dispensation?

No. The Standards Committee has discretion as to whether or not to grant the request. It can also grant a partial dispensation to enable you to speak but not vote or a dispensation to enable you to speak and vote. The Standards Committee has adopted a set of criteria to assist it in deciding the circumstances in which a request for dispensation will be granted.

Are there any circumstances when a dispensation cannot be granted?

Yes. In the case of elected Members of Braintree District Council, a dispensation cannot be given:

- to allow a Member to vote in an Overview and Scrutiny Committee on any decision made by a body of which they were a Member at the time the decision was taken;

- to allow an Executive Member with a prejudicial interest in an item of executive business to take an executive decision about it on their own.

How do I make a request for a dispensation?

A request has to be made in writing by the Member who is seeking the dispensation. An individual request must be made by each Member who wishes to seek a dispensation and it is not therefore possible for the Town or Parish Clerk to request a general dispensation for more than one Member.

A pro-forma application form can be downloaded from the Council's website.

You should state the nature of the interest for which a dispensation is sought, the nature of the request (i.e. to enable you to speak only or to speak and vote) and the duration. A dispensation may be granted only for one meeting or for a period up to 4 years.

You should also specify the reasons why you think the Standards Committee should grant the dispensation.

How much notice does the Standards Committee need to consider my request?

The Standards Committee may decide to constitute a Sub-Committee to determine your request so that it can be dealt with more quickly.

However you should leave as much time as possible between requesting the dispensation and the meeting for which the dispensation is sought as it will be necessary to convene a formal meeting in order to determine the request.

It is therefore suggested that you submit your request a minimum of 10 working days prior to the meeting at which you wish to request that you be given a dispensation to speak and/or vote to ensure that your request can be considered.