

# Wolverhampton City Council

## INFORMATION ITEM

Committee/ Panel	<b>STANDARDS COMMITTEE</b>	Date: <b>30 JULY 2009</b>
Originating Service Group(s)	<b>CUSTOMER AND SHARED SERVICES</b>	
Contact Officer(s)/	<b>S KEMBREY/F DAVIS</b>	
Telephone Number(s)	<b>4910/4932</b>	
Title/Subject Matter	<b><u>THE STANDARDS COMMITTEE (FURTHER PROVISIONS) (ENGLAND) REGULATIONS 2009 – GUIDANCE FROM THE STANDARDS BOARD FOR ENGLAND ON THE GRANTING OF DISPENSATIONS</u></b>	

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### 1.0 **Recommendation**

- 1.1 The Standards Committee is requested to note the Standards Committee (Further Provisions) (England) Regulations 2009 which came into force on 15 June 2009.
- 1.2 The Standards Committee is requested to note guidance received from the Standards Board for England on the granting of dispensations.

**THE STANDARDS COMMITTEE (FURTHER PROVISIONS) (ENGLAND)**  
**REGULATIONS 2009 – GUIDANCE FROM THE STANDARDS BOARD FOR**  
**ENGLAND ON THE GRANTING OF DISPENSATIONS**

**1.0 Purpose of Report**

1.1 To advise the Standards Committee of the Standards Committee (Further Provisions) (England) Regulations 2009 which came into force on 15 June 2009 and which make provision for directions to be made by the Standards Board for England for an Authority's initial assessment functions to be suspended and undertaken by another body; the establishment of joint Standards Committees and for Standards Committees to grant dispensations allowing Members to speak and vote at a meeting when they have a prejudicial interest. The report also advises the Standards Committee of guidance received from the Standards Board for England on the granting of dispensations.

**2.0 The Standards Committee (Further Provisions) (England) Regulations 2009**

2.1 The Standards Committee (Further Provisions) (England) Regulations 2009 make further amendments to the ethical framework. The regulations came into force on 15 June 2009 and deal with the suspension of initial assessment functions: joint Standards Committees and the granting of dispensations.

2.2 The Standards Board for England has also issued guidance on the granting of dispensations under the new regulations and a copy of this guidance is appended to this report.

**Suspension of Initial Assessment Functions**

2.3 The regulations set out circumstances in which functions of the Standards Committee may be suspended and exercised by another body. The body exercising the functions of an Authority's Standards Committee will be either the Standards Board for England or the Standards Committee of another local authority.

2.4 A direction can be made where an authority has:-

- (a) Failed to have regard to guidance issued by the Standards Board
- (b) Failed to comply with the direction issued by the Standards Board
- (c) The Standards Committee has failed to carry out its functions within a reasonable time period or in a reasonable manner
- (d) The Monitoring Officer has failed to carry out functions within a reasonable time period or in a reasonable manner
- (e) The Authority or its Standards Committee has invited the Standard Board to make a direction.

2.5 The regulations provide that before making a direction the Standards Board serves a notice of its intention to serve a direction. The notice is served on the Chair of the Standards Committee and the Monitoring Officer. The Standards Board are required to give reasons as to why it intends to give a

direction and the Authority has the opportunity to submit its observations on the intention to serve a direction to the Standards Board.

- 2.6 The notice of intention and any direction must be given in writing. The direction will specify the date from which it takes effect, the reason why it has been given and the identity of the body which will deal with the initial assessment functions of the Standards Committee.
- 2.7 Once a direction is made it must be publicised. The body specified in the direction can be amended and there are provisions for the direction to be revoked. The effect of a direction is that the body specified undertakes the initial assessment decisions of the Standards Committee and reviews of decisions not to take further action in connection with complaints.

#### Joint Standards Committees

- 2.8 The regulations make provisions to enable two or more relevant authorities to establish Joint Standards Committees to perform any functions under the ethical framework. They permit authorities to decide which functions they wish to be exercised by a Joint Standards Committee and require terms of reference to be agreed and sent to the Standards Board specifying which functions are to be exercised by the Joint Committee.

#### Dispensations

- 2.9 The 2009 Regulations revoke the Relevant Authorities (Standards Committees) (Dispensations) Regulations 2002 which previously governed the granting of dispensations.
- 2.10 A dispensation allows a Member to speak and vote at a meeting when they have a prejudicial interest. The criteria for granting these dispensations is now contained in Regulation 17 of the 2009 Regulations which provides that a dispensation can be granted:-
- (a) Where more than 50% of the Members who would be entitled to vote at a meeting are prohibited from voting or
  - (b) 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.
- 2.11 A dispensation cannot be granted to:
- (a) A Member allowing them to vote in overview and the scrutiny committees about decisions made by any body they were a member of at the time the decision was taken, and
  - (b) a dispensation cannot be given to allow an executive member with a prejudicial interest in a item of executive business to take an executive decision about it on their own.
- 2.12 The dispensation granted may apply to just one meeting or it may be applicable on an ongoing basis. The dispensation, however, can not last for more than four years.

2.13 Regulation 18 of the 2009 Regulations provide that Standards Committees must ensure that records of dispensations are kept. The guidance issued by the Standards Board provides further practical guidance on the process for granting dispensations and recording them.

3. **Legal Implications**

3.1 This report details work undertaken to comply with the ethical framework relating to Local Government under Part III of the Local Government Act 2000.

4. **Financial Implications**

4.1 The Council is required to provide the Monitoring Officer with sufficient resources to undertake her responsibilities. Provision is made within the revenue budget.

5. **Equalities Implications**

5.1 The Members Code of Conduct contains specific obligations relating to equalities.

6. **Environmental Implications**

6.1 There are no direct environmental implications arising from this report.

# DISPENSATIONS

# contents

<b>Introduction</b>	<b>2</b>
<b>Dispensations</b>	<b>3</b>
Granting dispensations under the new regulations	3
Legal requirements for granting dispensations	4
Issues and criteria to consider when granting dispensations	5
Considerations for dealing with dispensation requests	5
Practical guidance on the process for granting dispensations and recording them	6

# introduction

This guidance on dispensations is aimed at standards committees. It is not mandatory but has been written to help describe when standards committees can grant dispensations for members allowing them to speak and vote at a meeting when they have a prejudicial interest.

# dispensations

## Granting dispensations under the new regulations

The legislation states standards committees can grant dispensations for members allowing them to speak and vote at a meeting when they have a prejudicial interest. The criteria for granting these dispensations changed in June 2009

Concerns were raised by some authorities, as well as the Standards Board for England, about the provisions of previous dispensation regulations. Due to these concerns, the Standards Committee (Further Provisions) (England) Regulations 2009 (the regulations) revoke the previous regulations. They replace them with new provisions to clarify the grounds on which standards committees may grant dispensations to local authority members.

Under Section 54A(1) of the Local Government Act 2000 an authority's standards committee can set up a sub-committee to consider requests for dispensations. Any reference in this guidance to the standards committee includes any sub-committee which has this function.

Dispensations may be granted for speaking only, or for speaking and voting. The 2007 Code of Conduct (the Code) relaxed the provisions for restricting members from speaking. Therefore, the need to request a dispensation in this respect is now limited to circumstances where the public do not have the right to speak, or to where a parish or police authority has not adopted paragraph 12(2) of the Code.

Part 4 of the regulations sets out the

circumstances in which a standards committee can grant dispensations to members of relevant authorities in England, and police authorities in Wales. If a member acts in accordance with the granting of a dispensation, taking part in business otherwise prohibited by an authority's code of conduct would not result in a failure to comply with that code.

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.

**Note:** Although the Regulations are not explicit, political balance is a legal formula, set out in the Local Government and Housing Act 1989 and associated regulations. It applies only to relevant authorities and places an obligation on them to reflect the political balance of their elected members when determining who should sit on certain committees. It does not apply to parish councils.

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

There are two exceptions to this:

- Members cannot be given a dispensation allowing them to vote in

# dispensations

overview and scrutiny committees about decisions made by any body they were a member of at the time the decision was taken.

- A dispensation cannot be given 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.

The dispensation granted may apply to just one meeting or it may be applicable on an ongoing basis. However, the dispensation cannot be used to allow participation in the business of the authority if it was granted more than four years ago.

## Legal requirements for granting dispensations

- 1) Standards committees can grant a dispensation if more than 50% of members have a prejudicial interest in an item of business to be discussed at a meeting which is covered by their code of conduct. They must ignore any members who have already been granted dispensations when doing this (see paragraph [\*]). The list of meetings is set out in paragraph 1(4) of the Model Code of Conduct contained in the Local Authorities (Model Code of Conduct) Order 2007. These are meetings of:

- the authority
- its executive and its committees and sub-committees
- any other committees, sub-committees, joint committees, joint sub-committees or area committees

of the authority.

- 2) Standards committees can grant a dispensation for an item of business if the political balance of a meeting would be upset enough to prejudice the outcome of the vote. They must ignore any members who have already been granted dispensations when doing this (see paragraph [\*]). This means that due to the number of members who are prevented from voting the political balance of the committee is changed. This is similar to a provision that has been in existence in Wales for some time. As before, this does not apply to parish councils as they are not bound by the political balance rules.

[\*]The requirement to ignore any members who have already been granted dispensations means that standards committees should disregard any previously granted dispensations in order to work out whether the two circumstances above apply.

So, if there were ten members on a committee, six of whom would not be able to vote on some business, all six can claim a dispensation. If previously granted dispensations were not disregarded, once two people had been granted dispensations, the remaining four would be ineligible because at that point 50% of the committee would be able to vote.

In addition it is necessary to consider if any of the exceptions set out above apply.

# dispensations

## Issues and criteria to consider when granting dispensations

The number of members in each political group on an authority could affect the eligibility to apply for a dispensation.

In situations where one political party has a large majority on an authority, and therefore on its committees, members of that political party will not be eligible to apply for a dispensation frequently under the criterion for political balance (see page 3). Where an authority has two or more political parties, and the number of members that each party has is fairly evenly balanced, the eligibility to apply for a dispensation will rise.

Clearly there is a difference between being eligible to apply for a dispensation and it being appropriate for that dispensation to be granted. We recommend that the standards committee considers the need for criteria to be applied to requests for dispensations. The committee will 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.

## Considerations for dealing with dispensation requests

**Q. Is the nature of the member's interest such that allowing them to participate would not damage public confidence in the conduct of the authority's business?**

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

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.

**Q. Is the interest common to the member and a significant proportion of the general public?**

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.

# dispensations

**Q. Is the participation of the member in the business that the interest relates to justified by the member's particular role or expertise?**

For instance, a member might represent the authority on another public body – such as a fire or 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.

**Q. 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 circumstances such as these, the standards committee might believe that it is in the interests of the authority's inhabitants to remove the incapacity from speaking or voting.

## **Practical guidance on the process for granting dispensations and recording them**

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. Therefore, standards committees should set all this out and make it available to members.

A member must submit an application in writing explaining why a dispensation is desirable. Only the member can do this – they can't ask somebody else to do it on their behalf. It is sensible to send that application to the monitoring officer so that they can arrange for it to be considered by their standards committee.

A standards committee meeting must be convened to consider the application for a dispensation. Therefore, it is not possible to grant a dispensation as a matter of urgency to deal with emergency business.

The committee must consider the legal criteria set out on pages 3–4, including the exceptions. They must also consider any other relevant circumstances. These can include any local criteria they have adopted.

The committee will need to consider whether the member making the request will be allowed to make oral representations to the committee or whether the application will be dealt with only through written representations.

A standards committee has the discretion to decide the nature of any dispensation. For example, the committee may consider that it is appropriate that the dispensation allows the member to speak and not vote, or to fully participate and vote. The committee can also decide how long the dispensation should apply, although it cannot be longer than four years.

It is our view that the regulations do not

# dispensations

allow standards committees to issue general dispensations to cover members for any situation where a prejudicial interest may arise. The regulations refer to circumstances that arise at “a meeting”. Therefore, we would expect most dispensations to cover a specific item of business at one meeting of the authority.

The decision must be recorded in writing and must be kept with the register of interests established and maintained under Section 81 (1) of the Local Government Act 2000.

Standards committees can refuse to grant a dispensation. The regulations allow for standards committees to use their discretion rather than impose an obligation for them to grant dispensations.