

DECLARATION OF INTERESTS-NUCLEAR ISSUES AND DISPENSATIONS

LEAD OFFICER: Martin Jepson
REPORT AUTHOR: Martin Jepson

Summary and Recommendation:

Reports on the need for Copeland Borough Councillors to declare interests when Nuclear Issues are discussed and considers the possibility of a Dispensation or Dispensations being applied for in respect of such discussions. May also be of value in respect of Parish and Town Councils.

Recommendations:

- 1. Note advice on Declaration of Interests;**
- 2. Consider and give guidance to Members on Dispensations in respect of discussions on Nuclear Issues.**

1. INTRODUCTION

1.1 A continuing source of discussion for members of Copeland Borough Council has been as to when interests should be declared when matters arise, particularly at Council meetings, on Nuclear Issues. I have provided members of the Borough Council with advice on several occasions , the latest advice being attached at Appendix A.

1.2 Members of the Borough Council do take up a significant amount of time at Council meetings explaining the interests they have and some Members are clearly unhappy over having to declare interests. As members of this Committee will see from my advice at Appendix A, however, my view is that although Personal Interests will regularly need to be declared, it will be much rarer for Prejudicial Interests to be declared (meaning that the Member in question will need to leave the Committee or Council Meeting and take no further part in the debate).

1.3 In addition to some concern over procedures for declarations , and indeed whether declarations should in some cases be made, I have also been asked to

raise the issue of a possible Dispensations or Dispensations for Members to speak on Nuclear Issues, notwithstanding their having Prejudicial Interests.

1.4 This paper may also be of some value for Parish and Town Councillors.

2. THE NEED TO DECLARE INTERESTS

2.1 At Council and Committee meetings, in addition to declaring those interests which are declarable on a Member's Register of Interests form in respect of Nuclear Issues Members must also declare an interest where:-

"... the well-being or financial position of [the Councillor], members of [their] family, or people with whom [they] have a close association, is likely to be affected by the business of [the] authority more than it would affect the majority of:-

...inhabitants of the Ward... affected by the decision....

[or] ...inhabitants of the Authority's area."

2.2 Where Nuclear Issues are discussed, a point frequently made is that for those living in the Copeland area, a very significant number of inhabitants either have a financial interest in the nuclear industry because of employment or pension, members of their family have such an interest or those with whom they have a close association have such an interest. The Standards for England definition of a "close associate" is somewhat vague but it is clear however that it means more than simply someone who is known to the Councillor. At Council debates, it has rarely if ever been the case that more than a majority of Members have declared interests on Nuclear Issues. By this rule of thumb, therefore, the need to declare would still exist.

2.3 When discussion takes place on more specific parts of the Nuclear Industry then the position becomes clearer since a lesser number of Members would have a direct interest in such specific issues.

2.4 As discussed in the letter at Appendix A I believe that the situations where Members would need to declare Prejudicial, in addition to Personal, Interests are relatively rare.

2.5 Taking account of the relative rarity of the need to declare a Prejudicial Interest and withdraw from a debate, I do not believe that Members' ability to take part in debates is being unreasonably restricted. The declaration of a Personal Interest still means that a Member can take part in that debate.

2.6 I have been made aware that Members at Cumbria County Council and LDNPA write out what interests they have on a printed form prior to a meeting in order to save Members' time in standing up at the meeting and declaring an interest. Further investigations on this are taking place as a time saving device and will be reported to the meeting.

2.7 Finally, it has been suggested to me that there is no need to declare an interest where an item comes before Council or a Committee as an information item only. However, the wording of the Code of Conduct refers to “any business” of the Authority and whilst I sympathise with the need not to become bogged down with bureaucracy I believe it is still necessary under the strict wording of the Code to declare interests in such cases where a Member is in attendance.

3. DISPENSATIONS

3.1 I have also been asked to raise the issue of whether the Standards Committee might be prepared to grant a Dispensation either for general discussions on Nuclear issues or more specific discussions on particular issues on Nuclear matters.

3.2 The first Dispensation Regulations were made in 2002 and modified and replaced in 2009, when I last reported to members on Dispensations. The Standards for England guidance is attached at Appendix B for ease of reference.

3.3 It is clear that the Dispensation Regulations relate to where Members would otherwise be required to withdraw from a meeting because of a Prejudicial Interest. It is not necessary or possible to grant a Dispensation where a Councillor only has a Personal Interest, as they would not thereby be stopped from participating in any discussion.

3.4 Dispensations can only be granted where either:-

1. More than 50% of the Members entitled to vote at a meeting are prohibited from voting, or;
2. The number of Members prohibited from voting would upset political balance to the extent that the outcome of voting would be prejudiced.

3.5 To the best of my recollection only a maximum of 2 Councillors have ever declared an interest on Nuclear Issues at a Council meeting at any one time. Unless there are likely to be significantly more Members declaring Prejudicial Interests in the future then such dispensations are unlikely to be given. In any event, as can be seen, Standards for England’s interpretation and advice is that general dispensations are not allowed under the Regulations, for the reasons shown in their paper.

**List of Appendices -Appendix A- Letter to Councillors
- Appendix B- Standards for England advice on
Dispensations**

List of Background Documents: None

APPENDIX A

Letter to all Councillors

29th June 2009

Declarations of Interest

I thought it would be of help to Members to summarise the rules which are in place for the Declaration of Interests at Meetings and to comment on a couple of specific areas of concern.

Under the Member Code of Conduct, which is reproduced in the Council's Constitution, Members must register their financial and other interests in a register, which is kept by myself. All Members have completed this process. We send a reminder to Members at least once per year that any changes in registration should be notified to me within 28 days.

Members will also need to declare any interests they have at meetings where matters to be discussed affect their interests. This includes both registrable interests and any interest which is not on their registration form. The latter is 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 the Council more than it would affect the majority of inhabitants of the ward or wards affected by the decision.

As a first step, where you have one, you need to declare a Personal Interest in a matter. You are allowed to declare Personal Interests but remain in the room and discuss an issue and vote on it. You will then need to decide if you have a Prejudicial Interest in that matter.

Personal interests can affect you or others listed above both positively or negatively. So, whether or not they or you stand to lose by the decision, you should also declare it.

During Council meetings in particular a wide range of information is presented to Members, very often for information. Although it is not incorrect to declare an interest in such items at the start of meetings, the advice of the Democratic Services Manager and myself has consistently been that unless there is a discussion in respect of such items there is no need to declare an interest.

The rules on Prejudicial Interests- where a Member needs to leave the room during a discussion- changed last year. The rules are now that a Personal Interest will also be a Prejudicial Interest if all of the following conditions are met:-

1. The matter does not fall within one of the exempt categories of decisions (of most relevance are discussions on Member Allowances and setting the Council Tax);
2. The matter affects your financial interests or relates to a licensing or regulatory matter;

3. A member of the public, who knows the relevant facts, would reasonably think your Personal Interest is so significant that it is likely to prejudice your judgment of the public interest.

In relation to Nuclear issues it is my opinion that Copeland is in a unique situation in respect of condition 3. Although there may be a number of situations where a Member might have an interest greater than others in the ward or wards affected and would thus need to declare a Personal Interest I believe that for a member of the public to consider there to be a Prejudicial Interest in respect of Nuclear issues the issue being discussed must have a clear and direct effect on the Member concerned. I am aware that most Nuclear issues being discussed by Members are of a general policy nature and, that being the case, I believe it would be the exception, rather than the rule, that Prejudicial Interests should be declared in Copeland.

Members should also be aware that the dispensation previously negotiated for the then BNFL employees ceased to apply from 2003. Members have previously been informed of the new dispensation procedures approved by the Standards Committee.

I realise that these issues are of continuing concern for Members but I hope this letter has been of help. If Members wish to discuss their own personal circumstances on any issue before a meeting the Democratic Service Manager or myself shall be pleased to make ourselves available.

Yours Sincerely,

Martin Jepson
Head of Legal and Democratic Services

DISPENSATIONS

contents

Introduction	2
Dispensations	3
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.

dispensations

It is our view that the regulations do not 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.