



City of Westminster

Standards Committee

Date: Monday 15 November 2010

Classification: For General Release

Title: Dispensations from the Members Code of Conduct

Report of: The Head of Legal and Democratic Services

Wards Involved: None

Policy Context: High Ethical Standards

Financial Summary: There are no financial implications

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1. Executive Summary

- 1.1 This report is submitted following the decision of the Standards Sub-Committee on Wednesday 11 August 2010 to ask for a report reviewing the need for dispensations to be granted when Members of the Majority party are either the applicants or have made representations, either for or against, in a personal capacity.
- 1.2 The Sub-Committee asked the Officers to report to the next meeting of the Standards Committee on the two issues it discussed.
 - (a) The suggestion made by Councillor McKie that a special Sub-Committee comprising only Minority party Councillors be established to consider the planning applications which required the relevant Majority party Councillors to seek a dispensation, and
 - (b) The suggestion made by the Chairman that, for the purposes of the Members Code of Conduct that several Members of the Majority party only had a personal interest and not, in fact, a prejudicial interest, is investigated.

2. Recommendations

- 2.1 That the position in respect of the suggestion set out in paragraph 1.2 (a) above made by Councillor McKie be noted.
- 2.2 That the guidance set out in Appendix B be endorsed and issued to all Members of the Council.

3. Background Information

- 3.1 Councillor McKie felt that the public perception of Majority party Members giving consideration to applications either made or to which their colleagues had made representations would not be good. He therefore suggested that consideration be given to establishing, for these purposes, a special Sub-Committee comprised of 3 Minority party Members and no Majority party Member.
- 3.2 Legislation requires the Council to have a proportional balance of seats on its Committees and Sub-Committees. This is reviewed annually. One of the requirements is that where a local authority has more than one political group then Committees and Sub-Committees should not have only single party membership.
- 3.3 The arrangement suggested by Councillor McKie would however be capable of implementation within the provisions of the Local Government and Housing Act 1989, but such an arrangement can only be implemented upon decision of the Planning and City Development Committee, who must be served a special notice advising that a Sub-Committee which does not meet the proportionality rules is proposed. The Committee is also required to support such a proposal unanimously. In the event of any dissent a proportionally balanced Committee/Sub-Committee would need to be agreed.
- 3.4 Regulations have, however, been issued by the Government which allow a local authority Standards Committee to grant dispensations in the following circumstances:
 - a. The transaction of 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 (this is the duty to maintain political balance on the Council's Committees);

- 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 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.

3.5 The arrangements outlined above have been operated by the Standards Committee who have granted dispensations upon a formal request and subject to the Member(s) in question making a declaration in the following terms:

I (Councillor XXX) should declare an interest in respect of the planning application relating to XXX since I know Councillor XXX and he may be regarded as a close associate of mine within the meaning of the Members Code of Conduct. I should also say that I know him solely through my membership of the City Council and political activities and they are not very close associates. I am satisfied that I can deal with the applications wholly objectively. In the circumstances, and subject to me making this declaration, the Standards Sub-Committee on XXX agreed to grant a dispensation to allow me to speak and vote on the application.

3.6 The Standards Committee, following receipt of guidance from Standards for England on 14 July 2009 adopted a protocol for the consideration of applications for dispensation. The protocol is attached at Appendix A and paragraph 5 is of particular note and is reproduced below.

- “5. Where the criteria set out in paragraph 4 apply, the Standards Sub-Committee will take into account the following criteria in addition to the reasons put forward in the application and any other relevant circumstances:
- (a) 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? A dispensation is unlikely to be granted where the decision is one having a direct and significant financial effect on the applicant or a relative.
 - (b) Can the decision be readily taken in an alternative way without damage to public confidence in the conduct of the authority’s business? It may not be in the public interest if the decision, in the absence of dispensations being granted, could be taken only by a small number of Members or by Members of one political party only, or by an officer under delegated powers. But if a Member with a prejudicial interest could be readily substituted by another Member from the same political party that may be preferable to the grant of a dispensation.
 - (c) Is the interest common to Member and to a significant proportion of the general public?

- (d) Is the participation of the Member in the business that the interest relates to justified by the Member's particular role or expertise?
- (e) Is the business that the interest relates to about a voluntary organisation or a public body which is to be considered by a Policy and Scrutiny Committee? And is the Member's interest not a financial one?"

- 3.7 In the light of the contents of paragraph 3.5 above, the fact that legislative provisions are in place to grant dispensations and that planning applicants are entitled to have their application considered in accordance with the Council's usual procedures the suggestion put forward by Councillor McKie is not recommended.
- 3.8 The Chairman of the Standards Committee questioned if it was in fact necessary for the Majority party Members to apply for a dispensation as they did not have a prejudicial interest but only a personal interest and therefore dispensations were not in fact required.
- 3.9 The Committee is advised that on some occasions Members of the Majority party due to sit in consideration of such applications have not applied for dispensations but declared a prejudicial interest and withdrawn from the meeting. This suggests that the position, adopted by those seeking dispensations, is a precaution and perhaps over precautionary, as the correct application of the Code is already being made.
- 3.10 The circumstances whereby Members are seeking dispensations arise from a position adopted by Majority party Members who declare, for the purposes of the Code of Conduct, that all Members of the Majority party are friends or close associates. When this is applied to applications to which Members of the Majority party or their spouses are the applicants or made a representation in their personal capacity these become prejudicial interests.
- 3.11 A way forward is suggested that guidance set out in Appendix B is circulated to all Members who sit on the Planning and City Development Committee and on each of the Planning Applications Sub-Committees. Members will see that the guidance, if followed, will in most cases lead to a personal interest only being declared. If, again following the guidance, Members have a prejudicial interest, then as before a dispensation would not be granted and the Member(s) concerned should declare this and withdraw. In the event that the meeting becomes inquorate then the application would need to be deferred and submitted to another Planning Applications Sub-Committee, at which sufficient Members who do not have a prejudicial interest would be able to sit. If it is not possible to establish a quorate meeting of a Planning Applications Sub-Committee then consideration to the dispensation process, already in place should be given.

3.12 The Chief Whip of the Majority Party has been consulted on the proposals in this report, as the guidance set out in Appendix B is at variance with the position currently adopted by the Majority party in these circumstances. He has indicated his support.

3.13 Whilst this report discusses the process in respect of planning it is possible that similar circumstances could arise in respect of Licensing. Accordingly, this is also reflected in the proposed guidance set out in Appendix B.

4. Legal Implications

4.1 These are set out in the body of the report.

5. Financial Implications – None.

**If you have any queries about this Report or wish to inspect any of the Background Papers please contact Mick Steward: Tel: 020 7641 3134;
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Background Papers – Local Government Act 1972

- None

APPENDIX A

Westminster City Council Standards Committee

Protocol for the Grant of Dispensations from the Code of Conduct

1. Legislation allows the Standards Committee, or its Sub-Committees, to grant dispensations to members allowing them to speak and vote at a meeting when they have a prejudicial interest. This protocol sets out how requests for dispensations should be made, the process that will be followed when the request is considered, and the criteria that will be applied when the request is determined. This protocol has been approved by the Standards Committee having regard to guidance on dispensations given by the Standards Board for England.
2. A member seeking a dispensation should submit an application in writing to the Head of Legal Services. The application should explain the reasons why a dispensation is desirable. The application should be submitted as early as possible, and (where the meeting date is known) in any event no later than fifteen working days before the meeting in question is due to take place. Because a Standards Sub-Committee must be convened to consider the application it may not be possible to grant a dispensation if shorter notice is given.
3. An application for dispensation will be considered on paper by a meeting of the Standards Sub-Committee. Oral representations to the Sub-Committee will not normally be considered. In deciding whether to grant the dispensation the Sub-Committee will consider
 - (a) whether the legal criteria for the grant of a dispensation are met (see paragraph 4 below)
 - (b) the reasons why a dispensation is desirable as put forward in the written application
 - (c) the criteria referred to below and in the guidance issued by the Standards Board for England
 - (d) any other relevant circumstances
4. The Standards Sub-Committee may grant a dispensation only 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.

The Sub-Committee will ignore any dispensations that have already been granted to other members at the meeting when deciding whether either of these criteria apply.

A dispensation may not be granted:

- To allow a member to vote at a Policy and Scrutiny Committee about a decision taken by him or by any body they were a member of at the time the decision was taken
- To allow a Cabinet member with a prejudicial interest in a matter to take an executive decision about it on his own

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

5. Where the criteria set out in paragraph 4 apply, the Standards Sub-Committee will take into account the following criteria in addition to the reasons put forward in the application and any other relevant circumstances:
 - 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? A dispensation is unlikely to be granted where the decision is one having a direct and significant financial effect on the applicant or a relative.
 - Can the decision be readily taken in an alternative way without damage to public confidence in the conduct of the authority's business? It may not be in the public interest if the decision, in the absence of dispensations being granted, could be taken only by a small number of members, or by members of one political party only, or by an officer under delegated powers. But if a member with a prejudicial interest could be readily substituted by another member from the same political party that may be preferable to the grant of a dispensation.
 - Is the interest common to member and to a significant proportion of the general public?
 - Is the participation of the member in the business that the interest relates to justified by the member's particular role or expertise?
 - Is the business that the interest relates to about a voluntary organisation or a public body which is to be considered by a Policy and Scrutiny Committee? And is the member's interest not a financial one?
6. In cases where a dispensation is granted the Standards Sub-Committee will consider the nature of the dispensation – ie whether the dispensation should allow the member to speak and not vote, or to fully participate and vote. In most cases where the dispensation is granted in the light of the above criteria, it will be appropriate to grant a dispensation allowing full participation. The Sub-Committee will also consider how long the dispensation should apply. In some cases, an application for a dispensation may be made before it is known exactly when the meeting will be. In those cases the Sub-Committee will normally grant the dispensation for a three month period, to permit flexibility.

7. The decision of the Standards Sub-Committee will be recorded in writing and kept with the register of interests established and maintained under Section 81(1) of the Local Government Act 2000.

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APPENDIX B

GUIDANCE TO MEMBERS ON THE PLANNING AND CITY DEVELOPMENT COMMITTEE AND PLANNING APPLICATIONS SUB-COMMITTEE AND THE LICENSING COMMITTEE

1. From time to time the Planning and City Development Committee and/or Planning Applications Sub-Committee will be asked to consider a planning application either submitted by a member of the Council (or their spouse) or one to which they have made representations in a personal capacity.
2. Understandably the Members sitting wish to ensure they comply with the Code of Conduct and do everything else correctly to ensure that the public perception in the planning process is not damaged. As a result Members of the Majority party have in these circumstances been seeking dispensations from the Members Code of Conduct.
3. The Head of Legal and Democratic Services has prepared this guidance, which has been endorsed by the Standards Committee to assist Members.
 - (a) Members, simply as a result of knowing another Member as a Member of the same political party and attendance at related social/community event are not regarded by the Standards Committee as having a personal interest except when the Member (or Spouse) is the applicant or objector in their private capacity. In the event that the association is simply as a result of these activities then the Member should, in all these circumstances, regard themselves as having a personal, but not a prejudicial interest.
 - (b) Where the Member concerned knows the Member as a result of greater social contact/friendship and this is, for example, outside of their political and community activities then it is more likely that the Member concerned has a prejudicial interest and should not sit when the application is from another Member who has a prejudicial interest.
 - (c) Members do not need to declare a personal interest that they regard Members who have, or may make representations as Ward Members.
4. As soon as a situation arises, which relates to the circumstance outlined above Planning Officers are required to contact the Council, Cabinet and Committee Secretariat so that the Members due to sit at the relevant meeting can be contacted to see if its possible that the meeting could become inquorate. Remedial action to ensure a quorate meeting can be held would then be considered, as outlined above.

5. **The Head of Legal and Democratic Services accepts that it is not always a straightforward matter for Members to determine if, even with this guidance, they have a personal, and therefore a prejudicial interest, in the circumstances to which the guidance applies. Accordingly, Members who may be in any doubt are urged to contact the Head of Legal and Democratic Services for advice.**
6. The guidance set out above shall also apply to Members of the Licensing Committee in the event of similar circumstances in respect of Licensing applications.