

**STANDARDS
COMMITTEE**

28th November 2012

**LOCALISM ACT 2011 - NEW STANDARDS REGIME - DISPENSATIONS AND
COMPLAINTS PROCESSES**

Relevant Portfolio Holder	Councillor Mark Bullivant
Portfolio Holder Consulted	
Relevant Head of Service	Claire Felton, Head of Legal, Equalities and Democratic Services and Monitoring Officer
Ward(s) Affected	All Wards
Ward Councillor(s) Consulted	N/A
Non-Key Decision	

1. SUMMARY OF PROPOSALS

- 1.1 To consider the granting of general dispensations under s33 of the Localism Act 2011 and under the Code of Conduct, to enable Members to participate and vote on matters under consideration at meetings in the particular circumstances set out in this report.
- 1.2 To consider the investigation and hearings processes as outlined in the report.
- 1.3 To consider the means of recording complaints made against Members under the new regime and how these should be reported.

2. RECOMMENDATIONS

The Committee is asked to **RESOLVE** that

- 1) **the Standards Committee grants a dispensation under Section 33 (2) (a) of the Localism Act 2011 and under the Council's Code of Conduct, to allow all Members to participate in and vote at Council and committee meetings when considering the setting of:**
 - a) **Council Tax; and**
 - b) **Members' Allowances,**

on receipt of a written request from Members for a dispensation and where Members may have a Disclosable Pecuniary Interest in the matter under consideration, which would otherwise preclude such participation and voting;
- 2) **the Standards Committee grants a dispensation under Section 33 (2) (c) and (e) of the Localism Act 2011 and under the Council's Code of Conduct to allow Members, who would otherwise be prevented from doing so, due to having a Disclosable Pecuniary Interest in the matter under consideration, to address Council and committees in**

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circumstances where a Member of the public may elect to speak;

- 3) the dispensations referred to at 1) and 2) above to be valid until the first Standards Committee meeting after the municipal elections in 2015.
- 4) the guidelines for the conduct of Investigations into allegations of breach of the Code of Conduct as attached at Appendix 1 be considered and approved;
- 5) the guidelines on the conduct of a Hearing following an investigation into an allegation of breach of the Code of Conduct as attached at Appendix 2 be considered and approved, and that consideration be given as to whether Hearings should take place in private or public and that Hearings Sub-Committees be established to conduct local hearings; and
- 6) that the process of the management and investigation of complaints should not be public information until the process has been completed, when information on the parties, the complaint and the outcome should be publicly reported to the Committee (unless the complainant is a private individual, and in exceptional circumstances the Monitoring Officer considers it appropriate for their name to be withheld from such public report).

3. KEY ISSUES

Financial Implications

- 3.1 None.

Legal Implications

Dispensations

- 3.2 Section 33 of the Localism Act 2011 provides that Dispensations can be granted in respect of Disclosable Pecuniary Interests ("DPI").
- 3.3 Section 33 (1) requires that a Member must make a written request for a dispensation.
- 3.4 Section 33 (3) provides that a dispensation must specify the period for which it has effect and that period may not exceed 4 years.

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Investigations and Hearings

- 3.5 Under sections 28(6) and (7) of the Localism Act 2011, the Council must have in place arrangements under which allegations that a Member or co-opted Member of the authority (or Parish Council within the authority's area) has failed to comply with that authority's Code of Conduct can be investigated and decisions made on such allegations.
- 3.6 The general arrangements for handling standards complaints were submitted to the Extraordinary Meeting of the Council on 19th June 2012 and Council delegated to this Committee and the Monitoring Officer authority to administer the Standards procedures and processes relating to Code of Conduct, and Arrangements for managing standards complaints, as adopted.

3.7 **Reporting Complaints**

- 3.8 The final matter for consideration sits within the general Arrangements and also engages the statutory duty to promote and maintain high standards of conduct by members under s27 of the Localism Act. It concerns the means of dealing with and reporting on complaints, the parties and outcomes and whether and when this information would be in public.

Service / Operational Implications

Dispensations

(i) Particular Issues for Consideration

- 3.9 Under s31 (4) of the Localism Act 2011 a Member who has a Disclosable Pecuniary Interest ("DPI") in a matter under consideration is not permitted to participate in the discussion or vote on the matter unless s/he has first obtained a dispensation under s33.
- 3.10 The consideration of whether to grant a dispensation under s33 has been delegated to this Committee.
- 3.11 Section 33 includes a number of situations where a dispensation can be considered but should be granted "only if, after having regard to all relevant circumstances" the Committee considers that one of those situations applies.
- 3.12 Section 33 (2) (a) provides that a dispensation may be granted where the authority "considers that without the dispensation the number of persons prohibited from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business".

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- 3.13 The Monitoring Officer considers that this exemption might be required where the business of a meeting is the setting of Council Tax and Members' Allowances so that it might be appropriate for the Committee to grant a dispensation to Members with a DPI when these items of business are under consideration, provided that Members comply with the requirement of applying for a dispensation in writing.
- 3.14 To satisfy this requirement, the Monitoring Officer will circulate to all members of the Council a request form for the dispensations described in this report for the period set out at Recommendation 3) above and, upon receipt of the written request, a dispensation will take effect.

(ii) Member ability to speak

- 3.15 Section 33 (2) (c) of the Localism Act provides that a dispensation may be granted where the authority "considers that granting the dispensation is in the interests of persons living in the authority's area".
- 3.16 Under the previous standards regime, an exemption allowed Members with the then equivalent of what are now "Disclosable Pecuniary interests" to speak at a meeting in the same way that a member of the public could exercise a right to speak, even where the Member had what was then known as a "personal and prejudicial" interest in a matter and would otherwise not have been able to be present at the meeting in any capacity. This exemption only extended to allowing the Member to address the meeting in the same way as the member of the public is able to do, and as soon as the Member had exercised the right to speak they had to then leave the meeting (unlike the member of the public, who could remain in the meeting after speaking).
- 3.17 This exemption did not transfer into the new regime under the Localism Act 2011 so that where a Member has a DPI affecting their ability to participate in a meeting, they are unable to exercise a right to speak to the meeting in the same way that a member of the public can, without a dispensation.
- 3.18 An example of where a Member with a DPI would currently be unable to participate in a meeting and exercise a right to speak would be at Licensing Sub-Committee, on a particular licensing matter under consideration.
- 3.19 The Monitoring Officer considers that it would be expedient for the Committee to consider granting a dispensation under the exemption in section 33(2)(c) to enable Members to exercise a right to speak as set out above.
- 3.20 There is still a requirement for a request for a dispensation to be made in writing so the Monitoring Officer will include this exemption in the request form to be circulated to Members referred to at 3.12 above.

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(iii) Investigations and hearings.

- 3.21 Since the adoption of the general Arrangements for handling standards complaints, two more detailed processes have been drafted and these are appended to this report as follows:

Appendix 1 contains the proposed process for the conduct of investigations into allegations of breach of the Code of Conduct in circumstances where local resolution of a complaint is not possible and it has been referred for investigation by the Monitoring Officer.

- 3.22 The Committee is asked to consider the proposed procedure and if satisfied with it, to agree to its adoption or as amended to the Committee's satisfaction.
- 3.23 **Appendix 2** contains the proposed process for the conduct of a Hearing at the outcome of an investigation, again for the Committee's consideration and if satisfied with it, to agree to its adoption or as amended to the committee's satisfaction.
- 3.24 In addition to considering the Hearing Procedure the Committee is also asked to consider whether Hearings should be held in public or private, and to establish Hearings Sub-Committees (of the Standards Committee) to carry out such Hearings.

(iv) Reporting on Complaints

- 3.25 Section 28 (4) of the Localism Act 2011 provides that a failure to comply with the authority's Code of Conduct is not to be dealt with otherwise than in accordance with the arrangements made and adopted by the authority under the Act.
- 3.26 The general thrust of the arrangements for dealing with complaints against Members for a breach of the Code of Conduct is for local resolution options to be used as far as possible, with the leaders of the political groups to be included along with the Independent Person and to encourage mediation and support measures to be used when the circumstances allow and that investigations are reserved for those cases where there would appear to be no other practical or effective means of resolution.
- 3.27 The arrangements as adopted do not address the issue of whether and when information on complaints is to be made public and the Monitoring Officer requests that the Committee considers and decides how the reporting of the number, nature and outcome of complaints can contribute towards discharging the Council's duty to promote and maintain high standards of conduct by Members under s27 of the Localism Act 2011.

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- 3.28 The Monitoring Officer would ask the Committee to consider whether an investigation should remain confidential until concluded formally and that all determinations, including informal determinations and whether Code related or otherwise should be reported to the Standards Committee in a public Report (with the caveat that a complainant may remain anonymous if they are a member of the public and can justify why they should remain anonymous).

Customer / Equalities and Diversity Implications

- 3.29 In addition, it is proposed that the new arrangements will be publicised on the Council's website and that Officers will work to ensure that members of the public are made aware of the process for making a complaint through all existing community engagement events.

4. RISK MANAGEMENT

Recommending the inclusion of the proposals made in this report in the overall arrangements for the processing of complaints against Members/co-opted Members appended to the report will enable the Council to discharge its duty to consider and determine standards complaints and to discharge the duty to promote high standards in public life.

5. APPENDICES

Appendix 1 - Guidelines for the conduct of investigations into allegations of breach of the Code of Conduct.

Appendix 2 - Process for the conduct of a Hearing after an investigation into allegations of breach of the Code of Conduct.

6. BACKGROUND PAPERS

Relevant sections of the Localism Act 2011.

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