



LATE REPORTS, URGENT BUSINESS and SUPPLEMENTARY INFORMATION

Standards Committee

Thursday, 20 January 2011

The Chairman has authorised the following item of urgent business.

Agenda Item Number	Page	Title	Reason for Late Report	Officer Responsible For Late Report
3	1 - 13	ITEMS OF URGENT BUSINESS AUTHORISED BY THE CHAIRMAN		
		Request for Dispensation – Yealand Redmayne Parish Council Report of the Monitoring Officer	Urgent decision required in respect of application received after publication of the agenda.	Monitoring Officer

STANDARDS COMMITTEE

ITEM OF URGENT BUSINESS REQUEST FOR DISPENSATION – YEALAND REDMAYNE PARISH COUNCIL

20th January 2011

Report of the Monitoring Officer

PURPOSE OF REPORT

To enable the Committee to consider a request for a dispensation from a member of Yealand Redmayne Parish Council.

This report is public

RECOMMENDATIONS

- (1) That the Committee consider the request from parish councillor Glyn Harmer of Yealand Redmayne, and determine whether or not to grant a dispensation to enable him to speak and vote at parish council meetings on matters relating to the Klargester drainage system. If granted, the dispensation should be effective until the parish council elections in May 2011.

1.0 Introduction

- 1.1 The Standards Committee (Further Provisions) (England) Regulations 2009 include provisions clarifying the grounds on which standards committees may grant dispensations to local authority members.
- 1.2 If a member acts in accordance with a dispensation, any participation in business prohibited by the mandatory provisions of the Code of Conduct will not constitute a failure to comply with the Code.
- 1.3 The circumstances where a standards committee may grant a dispensation to a member or co-opted member are:
- where more than 50% of the members who would, but for the granting of any dispensations in relation to that business, 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, but for the granting of any dispensations in relation to that business, upset the political balance of the meeting to the extent that the outcome of voting would be prejudiced.

1.4 A request for a dispensation must be submitted in writing to the standards committee. A dispensation can only be granted in respect of business arising in the period of four years following the grant of the dispensation.

1.5 At its meeting on the 1st October 2009, the Standards Committee considered its procedure for considering requests for dispensations, and resolved as follows:

“That the Committee agree that each request for dispensation be considered on its merits, taking account of the Standards Board Guidance.

That the Committee delegate to an ad hoc sub-committee of three members, chaired by an independent member, the authority to determine applications for dispensations and that such sub-committees be convened by the Head of Democratic Services in the same way as Assessment Sub-Committees

That applications for dispensations be submitted in writing and that the applicant be permitted to attend before the sub-committee to make representations and be required to attend if so requested by the sub-committee to provide further information.”

2.0 Details

2.1 A request for a dispensation was received from Councillor Harmer of Yealand Redmayne Parish Council on the 17th January 2011. The written request is appended to this report. The Monitoring Officer has clarified with the clerk to the parish council that there is an ongoing dispute over bills relating to the Klargester system, which the parish council wishes to pursue. Whilst the Committee has delegated to a Sub-Committee the authority to grant dispensations, this delegation does not prevent the full Committee from exercising the power itself, and given the date of this meeting and the date of the next parish council meeting, the Chairman has agreed that it would be reasonable for the request to be dealt with as an item of urgent business at this meeting.

2.2 The request is similar to one from three other Yealand Redmayne parish councillors which was considered and granted by a sub-committee in January 2010, enabling them to participate in and vote on any item of business before the parish council relating to the Klargester system. This is a private sewage system which serves a number of properties in Yealand Redmayne, including the properties of those three parish councillors and the current applicant. Their well-being may therefore be perceived as being affected to a greater extent than the majority of other inhabitants of the parish, and they would therefore have a personal interest in any discussion of the Klargester system by the parish council. Because this is a private sewage system, and the current dispute relates to its cost, any consideration by the parish council of the system is likely to affect the financial position of the councillors, and a member of the public with knowledge of the facts might reasonably regard this interest as so significant that it would be likely to prejudice their judgment of the public interest.

2.3 This means that the councillors would have prejudicial interests in the item of business and under the Code of Conduct, without a dispensation, would be required to withdraw from the meeting. The parish council has only five members.

2.4 The dispensations already granted, mean that the three councillors are able to participate in any discussions and participate in any vote or decision making, without

fear of any complaint that they have been in breach of the Code of Conduct. Granting the current request would allow parish councillor Harmer to do the same.

- 2.5 A copy of the Standards for England Guidance on Dispensations is appended to this report for Members' consideration. Members will note that in considering a request for a dispensation, and establishing whether more than 50% of members of the council have a prejudicial interest, there is a requirement to ignore any previous dispensations that have previously been granted. This means that the Committee may grant the current application notwithstanding that the other three councillors already have dispensations enabling them to participate.
- 2.6 In considering the request in the light of the Guidance, the Committee may wish to note that the interest is common to a number of the residents of Yealand Redmayne. On this basis, the Committee may take the view that the participation of this councillor would not damage public confidence in the conduct of the parish council's business. This was the view taken by the Sub-Committee when the three previous applications were granted.
- 2.7 To grant the current request would be consistent with the earlier decision, and it is recommended that if a dispensation is granted, it should enable the councillor both to speak and vote at any meeting of the parish council where the Klargester drainage system is discussed. As this is an ongoing issue, rather than one which is to be dealt with at one meeting only, the Committee is recommended to grant the dispensation until the next parish council elections in May 2011.
- 2.8 Any request for an extension of the dispensations after May 2011 would need to be considered afresh at that time in the light of the composition of the parish council following the elections. Looking further ahead, the provisions relating to dispensations may be amended once the Localism Bill is enacted.

3.0 Details of Consultation

- 3.1 There has been no consultation, and in the light of the previous decision it was not felt necessary for the councillor to be invited to attend the meeting.

4.0 Options and Options Analysis (including risk assessment)

- 4.1 The options available to the Committee are to grant the request or not to grant the requests. Given the previous decision to grant similar dispensations to three other parish councillors, it would seem consistent and reasonable for the Committee to grant the current request, to cover both speaking and voting on the issue of the Klargester system at parish council meetings until the next parish council elections in May 2011.

<p>CONCLUSION OF IMPACT ASSESSMENT (including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)</p>

<p>None arising from this report.</p>

FINANCIAL IMPLICATIONS

None directly arising from this report.

SECTION 151 OFFICER'S COMMENTS

The Section 151 Officer has been consulted and has no further comments.

LEGAL IMPLICATIONS

The provisions of the relevant Regulations are set out in the report and in the appended Standards Board Guidance.

MONITORING OFFICER'S COMMENTS

The report has been prepared by the Monitoring Officer in her capacity as adviser to the Standards Committee. The Monitoring Officer advises that the granting of this request would fall squarely within the scope of the Regulations. Not to grant the request would be inconsistent with the previous decision.

BACKGROUND PAPERS

None

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To Whom it may concern :

I am a Parish Councillor for Yealand Redmayne, North Lancashire. My details are :

Name : Glyn Harmer, 17, The Meadows, Yealand Redmayne, LA5 9SY

The village has a problem with their water bills, which cover an amount for sewage. The residents had been advised by the Lancaster City Council last year that the cost incurred in repairing the Klargester water system (caused by oversight on the part of the City Council) would be borne by the Council and not passed on to the residents.

The residents wish the Parish Council to take up the matter on their behalf.

There are 5 councillor seats, all of which are occupied . (I was Co-Opted onto the Parish Council recently). We need three to be quorate at meetings.

Four of the five Councillors have a personal (in that their sewage is dealt with by the Klargester) and possibly a prejudicial and financial interest (in that if the bill is reduced, they would benefit from that reduction).

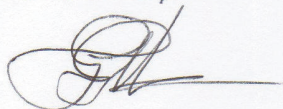
Of the hundred or so houses in the village, 48 are connected to the Klargester. Clearly to act as a Parish Councillor in this instance is to be acting for a majority of the residents.

I wish to apply, therefore, for a dispensation, that will allow me to speak and vote on this matter, on the grounds that over 50% of the Council members would otherwise be prevented from taking a full part in the Parish Council Meeting because of the prejudicial interest.

Please let me know the next course of action.

Note that the next Parish Council meeting will be held at the Village Hall, Footeran Lane, Yealand Redmayne, on Monday 24th January, at 7.30pm

Yours faithfully,



Glyn Harmer (Councillor)

DISPENSATIONS

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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.