



Standards Committee

7 June 2006

Report from the Borough Solicitor

For Information

Wards Affected:
ALL

The Granting of Dispensations by the Standards Committee

1.0 SUMMARY

- 1.1 Following a visit to the Hammersmith & Fulham Standards Committee by the Committee Chair and then Vice Chair, it was suggested that the issue of the granting of dispensations by the Brent Standards Committee be placed on the agenda of a future meeting.
- 1.2 This report provides a brief overview of the subject. It is anticipated that more comprehensive advice will be provided if the committee is called upon to consider a request for a dispensation.

2.0 RECOMMENDATIONS

- 2.1 It is recommended that members of the committee note the report.

3.0 DETAIL

Background

- 3.1 The Brent Standards Committee has so far not received an application for a dispensation. However, since it is an issue that could potentially arise at any time it is desirable that the Committee has some knowledge of the fundamental issues.

- 3.2 Members will be aware that according to paragraph 12 of the Code of Conduct, if a member has a prejudicial interest in any matter then he or she must withdraw from the room or chamber where a meeting is being held whenever it becomes apparent that the matter is being considered at that meeting.
- 3.3 A prejudicial interest is defined in paragraph 10 of the Code as any personal interest which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the member's judgement of the public interest.
- 3.4 Paragraph 11 specifically states that a member will have a prejudicial interest when he or she is involved in the consideration of a matter at a meeting of an overview and scrutiny committee or sub-committee, if that consideration relates to a decision made, or action taken, by another committee of which he or she is also a member.
- 3.5 However, it is possible for a member who has a prejudicial interest to request a dispensation. A dispensation is essentially the granting of permission by the Standards Committee to a member, to participate in a particular decision *even though* that member has a prejudicial interest in the decision. A dispensation is initiated by way of a written request from the member concerned. It can only be granted in specific circumstances prescribed by law, but the committee has a wide discretion as to whether it grants a dispensation in a particular case.
- 3.6 It is for a standards committee alone to grant or refuse to grant a dispensation. There is no right of appeal. The granting of a dispensation is not a matter for the Standards Board for England, and it cannot be delegated.

Circumstances in which a dispensation may be granted

- 3.7 The specific circumstances in which the committee *may* grant a dispensation are set out in the *Relevant Authorities (Standards Committee) (Dispensations) Regulations 2002*. They are when:

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 [of the Code of Conduct] 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*

- 3.8 Note that the mandatory requirements referred to are the requirements of the Code of Conduct that govern cases of personal or prejudicial interest. Section 15(4) of the LGHA 1989 is the section that sets out political balance requirements for Council committees.
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- 3.9 Essentially this means that a dispensation may be granted if not doing so would mean that half of the members eligible to participate in the meeting could not do so, or the political balance rules could not be observed.
- 3.10 However, there is a problem with the drafting of the “political balance” provision which has been recognised by the Standards Board for England, but has not yet been rectified. The problem is that the duty under section 15(4) is only a duty to ensure balance on particular committees – not a duty to ensure balance in any particular meeting. As a result, it is probably not currently possible to grant a dispensation for reasons of political balance.

Exceptions: circumstances in which a dispensation *may not* be granted

- 3.11 Even when the above criteria are met, there are two cases where the committee *may not* grant a dispensation. In such cases the member will naturally need to absent himself or herself from the decision in question in accordance with the usual procedures for prejudicial interests.
- 3.12 The first case is where a member is sitting in an overview and scrutiny role, and the prejudicial interest in question arises from his or her involvement in a previous decision or action that is being considered by the Overview and Scrutiny committee or sub-committee. This might occur if, for example, a Councillor who was formerly a member of the Executive subsequently became a member of the Overview and Scrutiny Committee. The member would have a prejudicial interest whenever the committee scrutinised an Executive decision that he or she had participated in.
- 3.13 The second case where a dispensation *may not* be granted is where an executive member is exercising an executive power which he or she is entitled to exercise individually. However this could not occur under our present arrangements, as there are no such powers at present in the Brent constitution.

Decision Making

- 3.14 Once the committee has received and considered a member’s request for a dispensation, it must decide whether or not to grant it. According to the regulations, the committee may (but is not obligated) to grant a dispensation when it concludes that:

having regard to the [circumstances in which a committee may grant a dispensation] , the content of the application, ... and to all the other circumstances of the case, it is appropriate to grant the dispensation.

- 3.15 A decision as to whether it is “appropriate” is entirely in the hands of the committee, and a wide variety of factors might be relevant. For example the degree of disruption or inconvenience that would be caused by a failure to grant the dispensation might be one factor. The seriousness of the prejudicial interest might be another.
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- 3.16 Under the Regulations, it is possible to grant a dispensation for up to four years duration. However, the requirement for the committee to consider all the circumstances of the case would make it very difficult in practice for the committee to grant any kind of ongoing dispensation. It seems unlikely that it would be possible to grant a dispensation other than as a one-off response to a particular prejudicial interest in a particular matter.
- 3.17 The regulations allow some flexibility regarding the precise form of the dispensation. For example, it would be open to the committee to grant a dispensation to allow a member to attend a meeting and speak on a particular matter in which he or she had a prejudicial interest, while not giving the member the right to vote on the matter.

Record Keeping

- 3.18 A record of all dispensations granted must be kept with the Register of Members Interests.
- 3.19 The dispensation does not remove the obligation on a member to disclose their personal and prejudicial interests. As a matter of practice it is obviously desirable for a member to also disclose that they have received a dispensation whenever it is relevant.

When might dispensations be relevant to Brent?

- 3.20 Given the criteria under which dispensations may be granted, one would usually expect a large number of members to have a prejudicial interest in a particular matter before dispensations would become permissible. In the case of a large urban Council like Brent this is probably less likely than in, for example, a small Parish Council.
- 3.21 It is possible to imagine a situation in which a political party in some capacity was the subject of a council decision which could give rise to a prejudicial interest for all or many members of a political group. For example, a planning application by a political party for the construction of a new meeting place for local party meetings where no such building currently existed might give rise to a prejudicial interest among members of the party in question.
- 3.22 Perhaps, if at some point in the future Area Committees were to be adopted by Brent, dispensations might also become more likely. The smaller pool of eligible decision makers, coupled with the greater likelihood of interests arising due to local proximity, could increase the proportion of members likely to experience prejudicial interests in relation to a given decision.

4.0 BACKGROUND PAPERS

- 4.1 Case Review, Volume 1, Standards Board for England, 2003
- Bulletin, Issue 7, Standards Board for England, November 2002
- Bulletin, Issue 17, Standards Board for England, March 2004
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5.0 CONTACT OFFICERS

- 5.1 Any persons wishing to inspect the papers in connection with the above proposals should contact Graham Beever at the Town Hall Annexe, Forty Lane, Wembley, Middlesex HA9 9HD, tel 020 8937 1368.

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