

WEST MIDLANDS FIRE AND RESCUE AUTHORITY

STANDARDS COMMITTEE

26 NOVEMBER 2012

1. DISPENSATIONS UNDER THE LOCALISM ACT 2012

Report of the Clerk to the Authority and Monitoring Officer

RECOMMENDED

THAT general dispensations be granted to all members of the Authority from Section 31(4) of the Localism Act 2011 in respect of the following:-

- an allowance, payment, pension or indemnity given to members;
- setting council tax or a precept under the Local Government Finance Act 1992.

THAT the Monitoring Officer be designated as the proper officer of the authority for the purposes of written requests by a member or co-opted member of the authority for the grant of a dispensation;

THAT the Monitoring Officer be delegated the power to grant dispensations under ground (a) of Section 33(2) the Localism Act 2011.

2. PURPOSE OF REPORT

- 2.1 On 25 June 2012, the Authority agreed to delegate to the Standards Committee the power to grant dispensations under Section 33 of the Localism Act 2011 (the Act). The provisions on dispensation from members taking part and voting on matters have been significantly changed by the Act. The purpose of this report is to seek approval from the Standards Committee for a list of decisions which require the granting of a general dispensation for all members of the Authority to enable the effective and efficient running of Authority business. A further ground for granting dispensations relates to a situation where so many members are prohibited from participating in an item that business would be impeded and it is recommended that the granting of

these dispensations is delegated to the Monitoring Officer. This would enable such dispensations to be granted prior to a meeting.

3. **BACKGROUND**

3.1 General exemptions were set out in the previous Code of Conduct to all members with regard to prejudicial interests in any business of the authority where that business related to functions of the authority in respect of the following [only some of which relate to the functions of the Authority]:-

- housing, where you are a tenant of your authority, provided that those functions do not relate particularly to your tenancy or lease;
- school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
- statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
- an allowance, payment or indemnity given to members;
- any ceremonial honour given to members; and
- setting council tax or a precept under the Local Government Finance Act 1992.

3.2 Under the previous Code of Conduct, a member who has a prejudicial interest could apply to Standards Committee for a dispensation on two grounds:-

- that at least half of the members of a decision-making body have a prejudicial interest (this ground is of little use as it is normally only at the meeting that it is realised how many Members have prejudicial interests in the matter, by which time it is too late to convene a meeting of Standards Committee; and
- that so many members of one political party have prejudicial interests in the matter that it will upset the result of the vote on the matter (this ground would require that the members

concerned were entirely predetermined, in which case the grant of a dispensation to allow them to vote would be inappropriate).

- 3.3 The new law on interests does not reproduce the exemptions set out in paragraph 3.1 and, as a result, members will effectively be both breaching their Code of Conduct and also committing an offence, should they take part in a meeting where any of these matters are being discussed and they have a disclosable pecuniary interest in the matter.
- 3.4 Where these matters arise and are relevant to the Authority it would appear prudent in line with previous legislation for a general dispensation be granted to apply to all members to allow for the effective and efficient running of Authority business. Any dispensation granted cannot exceed four years from the date it is granted.
- 3.5 On 25 June 2012, the Authority agreed to grant the power of dispensation to Standards Committee. This will ensure full member scrutiny and allow for the decision to grant dispensations to be taken publicly. However, there are times when a conflict may be discovered just prior to or at a meeting where so many members would be prohibited from participating in an item that the business would be impeded. An adjournment due to the meeting not being quorate may result in delay and detriment to the Authority or other parties.
- 3.6 In order to guard against this situation arising it would be useful to delegate powers to the Monitoring Officer in order to allow her to grant a dispensation. It is considered that grounds for this dispensation would be objective and could be granted effectively "at the door of the meeting". The remaining grounds for granting dispensations which are relevant to the Authority are rather more complex and subjective and it is considered appropriate that the discretion to grant dispensations on these grounds remains with Standards Committee.

4. **EQUALITY IMPACT ASSESSMENT**

- 4.1 An Equality Impact Assessment has not been carried out as this report proposes a continuation of policy established through previous legislation. The Authority will have due regard to the equalities duties in the operation of its standards framework.

5. LEGAL IMPLICATIONS

5.1 Under section 33(2) of the Localism Act 2011, a dispensation may be granted in the following circumstances:

- (a) that so many members of the decision making body have disclosable pecuniary interests in a matter that it would “impede” the transaction of the business of that body. [In practice this means the decision making body would be inquorate as a result]
- (b) that without the dispensation the representation of different political groups on the body transacting the business would be such as to alter the outcome of the vote on that particular matter.
- (c) that the authority considers that the dispensation is in the interests of persons living in the authority’s area.
- (d) that without a dispensation no member of the Executive would be able to participate in a particular matter.
- (e) that the Council considers that it is “otherwise appropriate” to grant a dispensation. This is a particularly wide provision as to some extent is (c) above.

5.2 In each case when a dispensation is granted it must specify how long it lasts for to a maximum of four years (this reflects the previous legislation) and the Authority must consider the application “after having had regard to all relevant circumstances”.

5.3 Any grant of a dispensation must specify how long it lasts, and only be in effect up to a maximum of 4 years.

6. FINANCIAL IMPLICATIONS

There are no strategic resource implications arising from this report.

**N SHARMA
CLERK TO THE AUTHORITY
AND MONITORING OFFICER**

Background Papers

The Localism Act 2011

The Member Code of Conduct approved by the Authority 25 June 2012