

STANDARDS COMMITTEE

22ND JULY 2005

DIRECTORATE OF FINANCE AND CORPORATE SERVICES

**REPORT OF THE HEAD OF LEGAL SERVICES
- C.A.JOHN**

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REPORT OF THE MONITORING OFFICER

1. Grant/Regrant of Dispensations under The Code of Member Conduct

1.A Local Councillors as School Governors

Members will recall that Committee considers the granting of a general dispensation to Councillors of Neath Port Talbot County Borough Council to speak and to vote on matters where those members have an interest as governors, as a nominee or an appointee of Neath Port Talbot County Borough Council and where in conducting Councils business

- (a) the political balance of the authority is upset; or
- (b) more than 50% of councillors are affected by the declaration of interests.

The granting of the dispensation in such circumstances allows all members to fully take part in debate and decision making to deal with education and governing bodies issues generally.

Standards Committee will recollect that I reported fully on the consideration to be applied to such dispensations in my main report to the Standards Committee in 2003 and annually since then with respect to block applications and from time to time for individual applications as follows

“The Code of Conduct provides that where a member holds a position of general control or management in a body about which a decision is being made by the Council, or where it relates to a body to which they have been appointed by the authority as a representative, then the member must declare an interest. The Code allows the member to speak but not vote in these circumstances. Members generally feel vulnerable if they do speak. The situation is very difficult to handle especially when Neath Port Talbot County Borough Council is dealing with whole authority education issues e.g. the annual budget for Schools.

Hence it is clear that the position of school governors is causing problems in authorities across Wales resulting in school governors having to withdraw from decisions which affect a large number of schools across the authority's area, because of the nature of the interest. On authority-wide issues or issues which affect a large number of schools this declaration of interest has the potential either of upsetting the political balance of the authority or preventing more than 50% of the authority's membership from taking part i.e. in reality most of the members are Governors. This runs counter to the principles of good administration and could in extreme situations prevent the authority from taking a decision at all."

I remind Committee that it is of course not appropriate to grant a dispensation to an individual Member where either:-

- (a) the proposal under discussion relates solely to his or her school, or to a small group of schools which include his or her school;
- or
- (b) where the decision would benefit the member, one of the member's family, a friend or any person with whom the member has a close personal association;
- and also (c) where the member has other personal interests apart from membership of a Governing Body.

Standards Committee has previously granted a general dispensation to vote to all Councillor Governors who have previously applied. The dispensations expired on 31st March last.

New Grants

Councillor G. E. Davies – Coedffranc Infants School

The above table sets out the name of a Neath Port Talbot County Borough Councillor who at the date of preparation of this report has applied to have a grant of dispensation to vote in respect of her membership etc of a Governing body. This may be granted as referred to in item 1.1 above on the same basis and for the same duration.

Recommended

I recommend that the dispensation set out above be granted from the date of this Committee to expire on 31st March 2006 to enable further reconsideration by this Committee of same in the light of any National Assembly for Wales guidance that may be received.

The dispensations granted and regranted will enable Councillors to vote in any matter affecting schools where:-

- (a) the declaration of interest affects the political balance of the authority or of the body considering the matter; or
- (b) where more than 50% of the membership of the body considering the matter has declared an interest relating to that business.

Provided that:-

- (a) this does not apply to any member where the proposed decision could benefit or disadvantage the member, one of the member's family or a friend or any person with whom the member has a close personal association; or is a unique benefit to his/her School
- (b) or where the member has an additional code interest other than his/her membership of a governing body.

This recommendation is made in order to secure compliance with the Council's adopted Code of Conduct, to ensure the proper dispatch of the Council's business, this committee being satisfied that the member's participation in the business to which the interest relates would not damage public confidence in the conduct of the relevant authority business."

Under Paragraph 18 of The Code of Conduct (and the relevant Regulations) The Standards Committee may not consider granting a dispensation to an individual Member unless the Member seeking it has previously notified me of that interest together with the relevant details. The Member has complied with this requirement.

Committees decision is requested.

1.B **Specific Member Applications for Dispensation**

- 1.B(i) Application from Councillor H. Bebell re: Extension to Building Land at Elba Crescent and Baldwins Avenue Crymlyn Burrows.

Councillor Bebell has requested that he be allowed to speak only with respect to the consideration of a planning application or related issue for an extension to an industrial building which he says is very close to his house. He accepts he has an interest under paragraph 13(f) of The Code of Member Conduct and without a dispensation he would be unable to speak or vote.

He is a Councillor in a single member ward and believes that unless he is allowed to speak other residents who are equally not happy with the proposals will not be represented and he will not be able to discharge his democratic duty towards them.

He is the Chairperson of Neath Port Talbot County Borough Councils Planning Committee. If given a dispensation to speak he will of course still need to declare his interest but will vacate the chair and speak from the floor of Committee – he will leave the meeting for the vote to be taken.

Committee's decision is requested hereon.

- 1.B(ii) Application by Community Councillor Edward Page – Cwmllynfell Community Council to speak on issues regarding Amman Awel Tawe when all aspects regarding this company are considered in his Council.

The criteria he claims for seeking dispensation is

- No damage to public confidence
- Common interest with the general public
- Voluntary organisation and not a financial interest
- In the interests of the inhabitants of the areas.

In support of his applicant he says “

“I am Chairman of Rhiw Fawr Action Group. We are a group which support renewal energy, solar, tidal, hydro but we object to the blight of the landscaping surrounding us be inefficient, highly suspended Wind Turbines.

I would be grateful if it was possible that I am allowed to speak and represent an overwhelming majority of my local residents on matters regarding Awel Amman Tawe.”

I wrote to Councillor Page on 6th June last to get more information from him, at the date of preparation of my first report I had not heard from him further.

He has now responded that “Amman Awel Tawe is a local alternative Energy Group who are based at Gwaun Cae Gurwen and have applied for a windfarm on Gwrhyd Mountain, they are also involved with other planning applications in Cwmllynfell”. “In question to the financial aspect or personal aspect the answer to the question is no.” (i.e. this latter information is an answer to my inquiries if he or his family etc had any other interests financial or personal or proximity of property etc to the proposed windfarm).

Committee’s decision hereon is requested.

1.C Additional Applications made after issue of this Report

Any applications received after publication of this Report will be tabled at Committee to be dealt with under the Chairpersons discretion for dealing with urgent items.

2. **Draft Procedures for Investigations and Hearings**

Enclosed as Appendix I is the draft document previously presented to Committee on 15th April last for further discussion and possible amendment at this meeting; this document is in its further amended form as enclosed with my letter of 27th June 2005. These further amendments are notated in blue print.

Recommended

That Committee determines an appropriate procedure for Investigations and Hearings

3. **Draft Responses to WAG Consultation on revision of The Model Code of Conduct**

Report to be circulated.

Officer Contact

For further information on this report please contact:-

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**Draft Procedures for
Dealing with Complaints of Misconduct Against
Members of the Councils**

Introduction

The Standards Committee will adopt a 2 stage procedure for dealing with complaints referred to it under the provisions of The Local Government Act 2000 (hereinafter called 'The Act'), WAG and Regulations made thereunder (hereinafter called 'The Regulations') relating to ~~Neath Port Talbot County Borough Council~~ The Code of Member Conduct of Neath Port Talbot County Borough Council and Community and Town Councils in the County Borough (hereinafter called 'The Code') and alleged breaches thereof.

1. Preliminary Investigations

- 1.1 ~~Where appropriate under The Act and Regulations On receipt of any Report referred under the above~~ the Standards Committee will make a preliminary determination a) that there is no evidence of a failure to comply with the Code of Conduct or b) that any person who is subject to the investigation must be given an opportunity to respond either orally or in writing ('First Stage'). ~~Such meeting may be held in private if deemed appropriate under relevant legislation governing access to information.~~
- 1.2 Dependant upon the outcome of the above determination Committee may proceed to a second stage which may involve ~~an oral~~ Hearing of ~~the allegations~~ ~~Case~~ at a further meeting or ~~by agreement~~ proceed by way of written representations to be considered at this Committee ~~at that further meeting.~~
- 1.3 Any person who makes oral representations before Committee ~~is may~~ bring a person with them to assist them with the oral presentation of their representations. Any person may be legally represented if ~~entitled to be represented by Council or a Solicitor or any other person~~ he or she so wishes at the further hearing.

2. Standards Committee Meeting to Consider the Complaint ('Second Stage')

- 2.1.A The procedure to be adopted at the Second Stage Hearing will be at the discretion of the Chairperson.

2.1.B Generally the Committee will conduct its consideration of the complaint in an inquisitorial manner.

2.2. The following procedure will generally be followed:

2.2.(1) The Chairperson will open the meeting by introducing himself/herself to members of the Committee and officers present to the persons present. The role of the Chairperson is to order the proceedings and questions should be put through the Chairperson. The Chairperson will then:-

- ascertain the parties present and make instructions as necessary;
- explain the nature of the decision to be taken;
- explain the procedure to be followed on the day.

2.2.(2) In the event of the non-attendance of a party who has indicated they would attend then the second stage meeting may be adjourned for a short period for enquiries to be made before a decision is taken as to whether to proceed in that party's absence or adjourn.

2.2.(3) The Committee will consider a request made by a party for permission for another party to appear at the hearing. Consideration may be given to adjournments as necessary relating to such applications.

2.2.(4) The hearing will take the form of an inquisition. Cross examination of persons making representations will not be allowed as of right but will be at the discretion of the Chairperson who will take into account the nature of the representations, findings of fact and other considerations as the case may require.

2.2.(5) (a) The Monitoring Officer or her representative or other investigating officer will present the report;

(b) The Councillor whose conduct has been complained of and the complainant will be entitled to attend the second stage meeting of the Standards Committee at which the report of The Monitoring Officer or Ombudsman is considered.

(c) The complainant or his or her representative will have an opportunity to set out his or her complaint;

(d) The Chairperson and members of Committee can ask questions of the complainant;

- (e) The Councillor against whom the complaint has been made, or his or her representative can then present his or her case. The Members of the Committee can then ask questions of the Councillor; and
- (f) Witnesses can be called at the discretion of the ~~Chairperson~~ ~~Committee~~. If called, witnesses can at the discretion of the Chairperson under 2.2.(4) normally be asked questions by the complainant, the Councillor whose conduct has been complained of or their representative or their respective representatives and by Chairpersons and other members of the Committee.
- 2.3. The Councillor against whom the complaint has been made or his/her representative can then sum up his or her case.
- 2.4. Any witness will be entitled to be accompanied by a representative of his or her choice including a legal representative. (?)
- 2.5. The complainant and the Councillor against whom the complaint has been made will normally be entitled to be present at the meeting throughout the Committee's hearing of evidence. The Committee will deliberate in private and may require with the Monitoring Officer or her representative to attend them.
- 2.6. Any procedural questions or issues which may arise during the course of the hearing will be determined by the ~~Chairperson~~ ~~Committee~~ ensuring at all times that the parties are councillor against whom the complaint has been made is treated fairly.
- 2.7. The Committee will conduct its hearing in public but may decide that it is necessary or in the public interest for all or part of the hearing to be in private ~~public~~.
- 2.8. At any time at the First or Second stage i.e. before or during the hearing the Committee may instruct The Monitoring Officer to obtain send for persons; papers or records not currently, before it and may request persons to appear at the Second Stage Hearing and adjourn at any time so that this can take place.

3. Periods

- 3.1 The preliminary determination meeting (First Stage) will be called as soon as possible and usually within 28 working days of The Monitoring Officer making a determination ~~notifying the Chair~~ that the investigation stage ~~is has been~~ completed. ~~(subject only to considerations that Committee in this meeting may bear on same) or if that is not possible, as soon as practicable after that period.~~
- 3.2 If a 'Second Stage' meeting is required it ~~will usually shall~~ be convened within 28 working days of the 'First Stage' determination unless ~~instructions are given to the Monitoring Officer to get additional information as requested or~~ exceptional circumstances mean that this time table cannot be achieved when it will be convened as soon as practicable after the 28 day period.
- 3.3 ~~Any The~~ Stage Meeting may be when commenced may be adjourned and reconvened at a later ~~date stage~~ if Committee feel circumstances warrant this.
- 3.4. Any adjourned meeting will be normally reconvened within 28 working days of the adjournment unless exceptional circumstances mean this timetable cannot be achieved when it will be reconvened as soon as practically possible after the 28 day period.
- 3.5. Upon completion of the second stage meeting the timetable will deliver, notify and publish it's findings including the sanctions to be applied in accordance with The Act and Regulations made thereunder including notifying the person complained against of any appeals procedure to be applied if an adverse finding is made against him/her.
4. For the avoidance of doubt the Chairperson may authorise a departure from the Committee procedure where he determines that it is in the interests of justice to do so.