

STANDARDS COMMITTEE – 1ST JULY 2011

FINANCE AND CORPORATE SERVICES

**REPORT OF THE HEAD OF LEGAL AND DEMOCRATIC SERVICES
AND MONITORING OFFICER**

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ITEM 1
PART 1 SECTION A

1. GRANT OF DISPENSATIONS RENEWALS UNDER SECTION 81(4) LOCAL GOVERNMENT ACT 2000

1.1. GENERAL

- 1.1.1. Under Section 81(4) of the Local Government Act 2000 Standards Committees may grant dispensations to a Member of a relevant authority (including a Community Council) allowing the Member to participate in any business where that participation would otherwise be prohibited by the mandatory provisions of the Members' Code of Conduct.
- 1.1.2. The National Assembly for Wales in the Standards Committees (Grant of Dispensations) (Wales) Regulations 2001 (SI No: 2279) sets out the circumstances in which these dispensations may be granted. The Standards Committee may only grant dispensations in the circumstances set out in the Regulations. In the report which follows, I set out the circumstances or grounds on which dispensations may be granted in each case.
- 1.1.3. The form of the report will generally set out the dispensation, the circumstances in which it may be granted, details of the applicant for the dispensation and whether it is a re-application or a new application.
- 1.1.4. 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 the Monitoring Officer of that interest together with the relevant details.
- 1.1.5. In accordance with previous practice, it is suggested that all dispensations be granted until the first meeting of the Standards Committee following the Council Annual General Meeting in 2012 in order to ensure that they all come up for renewal at the same time.
- 1.1.6. Many dispensations previously granted to cover School governorships and appointments to outside bodies are now no longer relevant due to changes in the Code.

1.2. **EMPLOYMENT**

- 1.2.1. Council is probably the largest employer in the County Borough. Hence, it is not uncommon for both Officers and Members to have family members employed by Council. Unfortunately, this can cause some problems in dealing with Council business.
- 1.2.2. The form of application for dispensation is intended to try to cover the situation when, although strictly required in law under the Members' Code of Conduct, serial declarations affect the smooth running of Committee business in circumstances where the general public would not draw any inference from the relationships being declared.
- 1.2.3. Often Members have family whose employment position within the organisation puts them far away from the ability to influence Council Policy and are certainly not considered decision makers. Sometimes, family members are in relatively low paid jobs which are part time or temporary in nature.
- 1.2.4. Hence all the applications for dispensations request permission to speak and vote on issues relating to the business of Neath Port Talbot County Borough Council, (including personnel matters), provided these matters do not directly financially advantage or disadvantage, or give other direct benefit or dis-benefit to a member of a Councillor's family who is employed by Council. The dispensation will apply only where the person employed is a senior manager of Council (i.e. by that I mean an Accountable Manager or above) or is charged with assisting with the determination of Council Policy.
- 1.2.5. The Member using the form will understand that the dispensation cannot be used if the matter under consideration would confer a greater benefit on the employed family member than on other tax payers, ratepayers or inhabitants of the Council's area, or be such that a member of the public might reasonably conclude it would significantly affect the Member's ability to act purely on the merits of the case and in the public interest if the Member were to take part in the discussion.

Standard form of Dispensation: Employment

- 1.2.6. “To speak and vote on issues relating to the business of Neath Port Talbot County Borough Council including relevant personnel matters which do not directly financially advantage or disadvantage or give other direct benefit or disbenefit to a Member or the Member’s family who is employed by the County Borough Council provided that the employment is not as a senior manager nor is involved in assisting with the determination of Council policy. This dispensation will not apply in circumstances where a member of the public might reasonably conclude that the employment would significantly affect the Councillor’s ability to act purely on the merits of the case and in the public interest.”

Note: A Senior Manager is an officer or Accountable Manager or equivalent and above.

Circumstances for granting the Dispensation: Employment

- 1.2.7. The circumstances are:-

“(d) the nature of the Member’s interest is such 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’s business”

Note: this paragraph derives from Regulation 2 of the Standards Committees (Grant of Dispensations) (Wales) Regulations 2001 and was the circumstance under which applications for dispensations of this sort were previously approved.

1.2.8. The Applications received are as follows:-

Councillor	Employment Dispensation
H. M. Bebell	His niece is employed in Environment Services as a Project Co-ordinator
D. W. Davies	His sister-in-law is employed as a Nursery Nurse.
I. B. James	His wife is employed as a permanent parking attendant.
Mrs. L. H. James	Her daughter in law is employed as a parking attendant
Mrs. O. Jones	Her niece is employed as a Teacher.
E. V. Latham	His son is employed as a Parks Attendant.
Mrs. M. A. Lewis	Her daughter in law is employed as a Support Teacher
A. Llewelyn	His wife is employed as a Teacher.
J. D. Morgan	His wife is employed as a Teaching Assistant
W. E. Morgan	His daughter is employed as a Clerk in Blaengwrach School.
L. Purcell	Her ex-husband is employed in Social Services, Health and Housing.
P. A. Rees	His daughter-in-law is employed as a School Clerk.
Mrs. B. Richards	Her son and daughter in law are employed as Accounts Clerks
P. D. Richards	His wife is employed as a Specialist Behavioural Outreach Worker
J. Rogers	1. His daughter is employed as a Teaching Assistant 2. His son is employed as an Admin Officer
A. N. Woolcock	His niece is employed as a Training and Development Support Officer

Recommendation

- 1.2.9. That the applications for dispensation set out in paragraph 1.2.6. be approved in the circumstances set out in Regulation 2 (d) of the Standards Committee (Grant of Dispensations) (Wales) Regulations 2001 in the standard form to speak and vote and that the dispensations run to the Standards Committee which follows the Annual Meeting 2012.

1.3. MISCELLANEOUS DISPENSATIONS

The Standards Committee has previously approved various dispensations to Members where they are members of voluntary organisations or organisations carrying out public functions where it is the wish of those Members to speak on Council business relating to those organisations and also, in some cases vote. The subject of the dispensation and its extent varied in each case and therefore I have summarised the applications in the table which appears below.

Circumstances for granting the Dispensations: Miscellaneous

- 1.3.1. The circumstances are:-

“(d) the nature of the Member’s interest is such 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’s business”

Note: this paragraph derives from Regulation 2 of the Standards Committees (Grant of Dispensations) (Wales) Regulations 2001 and was the circumstance under which applications for dispensations of this sort were previously approved.

1.3.4. Applications for Dispensations: Miscellaneous

Member	Subject of Dispensation	Extent of Requested Dispensation	Circumstances
A. P. H. Davies	When One Voice Wales is under consideration in Coedffranc Community Council or NPTCBC meetings	Speak and Vote	Reg 2 (d)
J. Dinham	To speak and vote on matters relating to the Integrated Children's Centre	Speak and Vote	Reg 2 (d)
A. Llewelyn	Ystalyfera Development Trust. Strategic housing matters even when they relate to housing association.	Speak and Vote Speak only	Reg 2 (d) Reg 2 (d)
J. Miller	1) Employment in ABMU - LHB 2) Melyn Community Conference	Speak Speak and Vote	Reg 2 (d)
Mrs. S. Miller	1) Employment in ABMU - LHB 2) Melyn Community Conference	Speak Speak and Vote	Reg 2 (d) Reg 2 (d)
P. D. Richards	1) To speak and vote on matters relating to the Youth Offending Panel. 2) To speak only and not vote, on matters of general, commercial and retail development, subject to the condition that the dispensation will not apply to any planning application by or transaction with the Co-operative Group, or with any subsidiary or related enterprise.	Speak and Vote Speak only	Reg 2 (d) Reg 2 (d)

Recommendation

That the applications for dispensation set out in paragraph 1.3.4. be approved in the circumstances set out in Regulation 2 (d) of the Standards Committee (Grant of Dispensations) (Wales) Regulations 2001 to speak or to speak and vote as set out in the Schedule above and that the dispensations run to the Standards Committee which follows the Annual Meeting 2012.

1.4. GRANT OF GENERAL DISPENSATION: SCHOOL GOVERNORS

At the last meeting of the Standards Committee a general dispensation was granted to allow all Members to speak and vote on education matters generally but, more particularly, the Strategic Schools Improvement Programme. This dispensation was granted under Regulation 2 (d), (f) and (g).

Recommendation

It is recommended that this general dispensation be further granted until the Standards Committee which follows the Annual meeting 2012.

1.6. BACKGROUND PAPERS

Letters received from Members.

1.7. WARDS AFFECTED

All

1.8. OFFICER CONTACT

For further information on this report please contact:-

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ITEM 2
PART 1 SECTION B

2. THE PROVISIONS OF THE BRIBERY ACT 2010

2.1. Purpose of Report

To inform Members of the provisions of the Bribery Act 2010.

2.2. Background

2.2.1. On 30 March, the Ministry of Justice announced that the Bribery Act 2010 will come into force on 1 July 2011. On the same day the Ministry also published guidance related to the Act. The Act will replace, update and extend the existing law against corruption which dates back to 1889.

2.2.2. The Act creates four new offences:

2.2.3. Offences of bribing another person (Section 1)

2.2.3.1. It will be an offence to offer, promise or give a financial or other advantage with the intention of inducing that person to perform improperly a 'relevant function or activity' or to reward that person for doing so. It will also be an offence to offer, promise or give a financial or other advantage where the person doing so 'know or believes' that the acceptance of the advantage would itself constitute the improper performance or a 'relevant function or activity'. In both cases it does not matter whether the advantage is offered, promised or given directly or through a third party.

2.2.3.2. In the local authority context, if the 'relevant function or activity' is of a public nature requiring the person performing it to either act (a) in good faith, (b) impartially or (c) in a position of trust, then it will be 'improperly performed' if there is a breach of a 'relevant expectation'. This 'expectation' is itself an objective test of what a reasonable person in the UK would expect in relation to the function or activity.

2.3. Offences relating to being bribed (Section 2)

This offence is relevant to a number of prescribed cases but in essence it will be an offence to agree to request, receive or accept a financial or other advantage with the intention that a 'relevant function or activity' should be preformed improperly and it does not matter whether the advantage is received directly or through a third party.

2.4. Bribery of a foreign official (Section 6)

This offence is applicable in situations where the intention of influencing a public official is in his/her foreign capacity.

2.5. Failure of commercial organisation to prevent bribery (Section 7)

The Act creates a new offence of failure by a commercial organisation to prevent a bribe being paid for or on its behalf. For the purposes of the Act a relevant commercial organisation means a body corporate or partnership which carries on a business or part of a business. Business is defined as a trade or profession. It is a defence if the organisation has adequate procedures in place to prevent bribery (Section 9).

2.6. Guidance

On 30 March, the Ministry of Justice published the final version of guidance about anti-bribery procedures in respect of the offence under Section 7. In one respect the guidance is of particular interest to local authorities since it suggests that a public authority may be counted as a commercial organisation for the purposes of the Act if it can be said to be trading. Although interpretation would be a matter for the Courts, the view expressed by the guidance would effectively extend the application of the Act.

2.7. Action Required

Officers are reviewing the Council's own contract documentation to see whether any changes are necessary. They will also look at the rules on gifts and hospitality, whistleblowing etc. It is considered that the standard provision of the Members' Code of Conduct and that relating to officers are already wide enough and do not require amendment to take into account the new legislation.

2.8. Recommendation

2.8.1. That no amendment be proposed to the Members' Code of conduct or that relating to officers.

2.8.2. That the Monitoring Officer reports back to Standards Committee on any amendments made to documentation, policies and procedures of the Council.

2.9. Wards Affected

All

2.10. Officer Contact

For further information on this report please contact:-

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