

6. Dispensations Protocol

Guide to Dispensations

The council is responsible for determining requests for a dispensation by a councillor under s.33 of the Localism Act 2011. The council may grant a dispensation to an elected or co-opted member on a matter with which they would otherwise not be permitted to deal, as a result of having a Disclosable Pecuniary Interest.

This guide explains:

- (a) The purpose and effect of dispensations
- (b) The procedure for requesting dispensations
- (c) The criteria applied in determining dispensation requests
- (d) The terms of dispensations

Until a dispensation is granted, a member may not participate in the consideration of the matter before the council (or any committee or sub-committee) in which they have a Disclosable Pecuniary Interest.

A member may also have a close Personal Interest under the Member Code of Conduct and should also use this same procedure to request a dispensation in respect of that interest.

Purpose and effect of dispensations

In certain circumstances, members may be granted a dispensation that enables them to take part in council business where this would otherwise be prohibited because they have a Disclosable Pecuniary Interest or a close Personal Interest. Provided members act within the terms of their dispensation there is deemed to be no breach of the Code of Conduct or the law.

Section 31(4) of the Localism Act 2011 states that dispensations may allow the member to:

- (a) participate, or participate further, in any discussion of the matter at the meeting(s); and/or
- (b) participate in any vote, or further vote, taken on the matter at the meeting(s)

If a dispensation is granted, the member may remain in the room where the meeting considering the business is being held.

Please note: if a member participates in a meeting where they have a Disclosable Pecuniary Interest and they do not have a dispensation, they may be committing a criminal offence under section 34 of the Localism Act 2011.

The same procedure will be used for applications close Personal Interests, enabling a member to remain in the meeting and to speak and vote.

Process for making requests

A request for dispensation must be made on an individual basis. Any member who wishes to apply for a dispensation should fully complete a Dispensation Application Form (Appendix 1) and submit it to the Monitoring Officer, explaining why it is desirable and appropriate to grant the dispensation.

Approval Process

The Monitoring Officer may only grant a dispensation to a member who has a Disclosable Pecuniary Interest or close Personal Interest, allowing them to participate in any discussion of a

matter at a meeting and/or to participate in any vote on the matter (as per paragraph 2 above), if they consider that:

- (a) without the dispensation, the number of persons prohibited from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business,
- (b) without the dispensation, the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business,
- (c) without the dispensation, each member of the authority's Executive would be prohibited from participating in any particular business to be transacted by the Executive,
- (d) granting the dispensation is in the interests of persons living in the authority's area, or
- (e) it is otherwise appropriate to grant a dispensation.

In the absence of the Monitoring Officer, the Deputy Monitoring Officer is authorised to execute the functions of the Monitoring Officer. The Appeals Committee also has the delegated power to agree dispensations.

Applications dealt with by the Monitoring Officer will normally be determined within 10 working days. Applications made to the Appeals Committee will go to the next ordinary meeting or it may be appropriate to arrange a special meeting at the discretion of the chairman of the committee. Applications must be received at least 10 working days before a meeting to enable a report to be prepared and the agenda published five clear days before the meeting.

The Monitoring Officer will formally notify the councillor of the decision and reasons in writing at the earliest opportunity and in any event within 5 working days of the decision.

Criteria for determination of requests

In reaching a decision on a request for a dispensation, the Monitoring Officer (in consultation with a Designated Independent Person) will consider:

- (a) The nature of the member's interest
- (b) The extent to which the request could have been avoided or other arrangements could be made
- (c) The need to maintain public confidence in the conduct of the council's business
- (d) The extent to which there is some personal benefit and the extent of the public benefit obtained by agreeing to a dispensation
- (e) The possible outcome of the proposed vote
- (f) The need for efficient and effective conduct of the council's business
- (g) Any other relevant circumstances

Terms of dispensations

Dispensations may be:

- (a) Granted for one meeting or for a period not exceeding 4 years
- (b) Subject to specific conditions, e.g. notification of any material change in circumstances arising from the dispensation

Disclosure of decision

Any member who has been granted a dispensation must declare the nature and existence of the dispensation before the commencement of any business to which it relates.

A copy of the dispensation will be kept with the Register of Members' Interests.

Dispensations for Conflicts of Interest when taking Executive decisions

Under regulations 12 and 13 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, the record of an Executive decision made either at meetings or by individuals, must include:

- (a) details of any conflict of interest either declared by any member of the body which made the decision or declared by any Executive member consulted by the councillor or staff member taking the decision which relates to that decision;
- (b) In respect of any such conflict of interest, a note of dispensation granted by the Chief Executive.

Please note: A conflict of interest is broader than a Disclosable Pecuniary Interest. It can be any interest that conflicts (or may reasonably be perceived to conflict) with a councillor's duty to take decisions only in the public interest in the light of material considerations.

Appendix 1

To: The Isle of Wight Council's Monitoring Officer

APPLICATION FOR A DISPENSATION UNDER SECTION 33 OF THE LOCALISM ACT 2011 IN RESPECT OF A DISCLOSABLE PECUNIARY INTEREST

Name of member:

A member who has a Disclosable Pecuniary Interest or close Personal Interest in a matter that is under consideration may not participate in the consideration of that matter by the council, a committee or sub-committee or by the Executive or a committee of the Executive unless they have first obtained a dispensation from the council.

You may apply for a dispensation by completing this form and sending it to the Monitoring Officer.

1. What is the matter for which dispensation is sought?

Please provide full details including amounts where the matter involves funding or finance.

2. For which type of meeting is dispensation sought?

(Full Council, Cabinet, Committee or Sub-Committee)

3. What is the nature of the Disclosable Pecuniary Interest or close Personal Interest?

Please provide full details.

4. What is the date of the meeting(s) at which this matter is to be considered?

5. For how long is the dispensation needed?

Please note that it cannot be longer than 4 years nor exceed the term of office of the member concerned.

6. Do you benefit personally from the business to which this application relates?

If "yes" the full details must be provided of the nature and extent.

7. How is the business of the council being impeded in the absence of a dispensation?

8. Are there any other factors that might help the council to reach a decision on the application?

9. Are you seeking a dispensation to speak and vote?

Yes/ No

10. Are you seeking a dispensation to speak but not vote?

Yes/ No

Signed: _____ Date: _____

Please complete, sign and return this form to the Monitoring Officer