

Dartford Borough Council - Dispensations Procedure Guide

1. INTRODUCTION

Under the Localism Act 2011 (the 2011 Act), the Council has a statutory duty to promote and maintain high standards of conduct by both its elected Members and co-opted Members.

The 2011 Act prevents Members from participating in any business of the Council where they have a disclosable pecuniary interest (DPI) unless they have sought a dispensation under Section 33 of the 2011 Act. This provision is extended by the Council, to prejudicial interests (PIs).

A dispensation must specify the period for which it has effect. The period specified may not exceed four years.

2. PURPOSE AND EFFECT OF DISPENSATIONS

In certain circumstances, Members may be granted a dispensation, which enables them to take part in Council business where this would otherwise be prohibited because they have a DPI or PI. Provided Members work within the terms of their dispensation, there is deemed to be no breach of the [Member] Code of Conduct or the law¹.

Section 31(4) of the 2001 Act provides that a dispensation may permit a Member:

- (a) to speak only on the matter at a meeting; or
- (b) to speak and vote on the matter at the meeting.

3. DISPENSATION GROUNDS

Dispensations may be sought on the following grounds that:

- (a) so many Members of the decision making body have an interest (DPI or PI) in a matter that the business of the meeting would be impeded (i.e. the meeting would be inquorate);
- (b) without a dispensation, the representation of different political groups on the body would be so upset as to alter the outcome of any vote;
- (c) the dispensation is in the interests of persons living in the area;
- (d) no Cabinet member would be able to participate on the matter without a dispensation²;
- (e) it is otherwise appropriate to grant a dispensation.

4. WHO DECIDES A DISPENSATION APPLICATION?

To ensure the timely consideration of an application for dispensation, the Council has delegated the decision making as follows:

- (a) **To the Strategic Director (Internal Services):** In consultation with the Monitoring Officer, to grant dispensations to Members with a DPI or PI to speak only or to speak and vote where:
 - (i) so many members of the decision-making body have DPIs or PIs in a matter that it would impede the transaction of the business; or
 - (ii) without a dispensation, no Cabinet member would be able to participate on a particular item of business.

¹ See Standing Order 19(1)(b)

² See Standing Order 15(5)(d)

- (b) **To the Audit Board:** To consider an application for dispensation on one or more of the following grounds:
- (i) without a dispensation, the representation of different political groups on the body would be so upset as to alter the outcome of any vote;
 - (ii) the dispensation is in the interests of persons living in the area;
 - (iii) it is otherwise appropriate to grant a dispensation.

5. GENERAL DISPENSATIONS

General dispensations are granted to Members and Co-opted Members to speak and vote on the following matters, which affect the generality of the public in the area, rather than Members as individuals, *provided* the matter(s) does not relate to Members' particular individual circumstances:

- Determining an allowance:** (including special responsibility allowances), travelling expense, payment or indemnity given to Members;
- Housing:** where a Member (or spouse or partner) holds a tenancy or lease with the Council;
- Housing benefit:** where a Member (or spouse or partner) receives housing benefit;
- Ceremonial honour(s)** given to Members;
- Setting the Council Tax or a precept** under the Local Government and Finance Act 1992 (or any subsequent legislation);
- Setting a Local Council Tax Reduction Scheme** or local scheme for the payment of business rates (including eligibility for rebates and reductions) for the purposes of the Local Government Finance Act 2012 (or any subsequent legislation).

General dispensations will remain in force until the next local government election and will be recorded in the minutes of the relevant meeting³.

NB: The general dispensation for council tax does not affect a Member's obligation under Section 106 of the Local Government Finance Act 1992 to declare and not vote if they are 2 months or more in arrears with their council tax when voting on setting the Council's budget.

6. CRITERIA FOR DETERMINING A DISPENSATION APPLICATION

In reaching a decision on a dispensation application, the Strategic Director (Internal Services) or the Audit Board (as applicable) (see section 4 above), will have regard to:

- (a) the need to maintain public confidence in the conduct of the Council's business e.g. whether the nature of the Member's interest is such that public confidence in the Council would be damaged if they were allowed to vote;
- (b) the need for the efficient and effective conduct of the Council's business e.g. if Members are not granted dispensations, the meeting would be inquorate;
- (c) the possible outcome of the proposed vote e.g. the effect of the Member's interest against the outcome of the vote if they are not participating in the vote;
- (d) the Member's expertise and knowledge and whether this justifies their participation in the item in question;
- (e) any other relevant circumstances.

7. WHEN A DISPENSATION CANNOT BE GRANTED

A dispensation cannot be granted to allow:

- (a) a member of the Scrutiny Committee or Crime and Disorder (Overview and Scrutiny) Committee to participate in the scrutiny of a decision in which they were involved;

³ See Standing Order 8(1)(c)

- (b) participation at informal meetings or site visits;
- (c) participation at Development Control Board or Licensing Sub-committee meetings where the Member has predetermined an application.

8. TERMS OF DISPENSATION

A dispensation will be granted:

- (a) for one meeting; or
- (b) for a period not exceeding four (4) years;
- (c) to speak only on the matter at the meeting(s); or
- (d) to speak and vote on the matter at the meeting(s).

9. APPLICATION PROCEDURE

The Strategic Director (Internal Services) is the Proper Officer for the purposes of receiving applications for dispensation pursuant to section 33(1) of the Localism Act 2011.

(a) An application (see the Annex⁴) must be submitted, in writing, to the Strategic Director (Internal Services):

(i) where section 4(a) applies, at least five (5) days before the meeting of the decision making body;

(ii) where section 4 (b) applies, at least ten (10) days before the meeting of the decision making body, to enable sufficient time to convene a meeting of the Audit Board (the Audit Board is subject to procedural rules relating to the calling of meetings etc. - it may not always be possible to convene a meeting at short notice).

(b) The application must clearly set out why the dispensation is necessary.

(c) The application must be submitted by the Member and not by someone else on their behalf. A group or joint application is not permitted.

(d) On receipt of the written request, the Strategic Director (Internal Services) or the Audit Board (as applicable), will consider the application, applying the criteria referred to in section 6 above.

(e) Ultimately, it is for the Strategic Director (Internal Services) or the Audit Board (as applicable), to decide:

- which ground (see section 3 above) will be applied;
- the terms of the dispensation (see section 8) above.

(f) The Strategic Director (Internal Services) will notify the Member(s) of her decision or that of the Audit Board and reasons, in writing. There is no right of appeal.

10. DISCLOSURE OF GRANT OF DISPENSATION

A Member who has been granted a dispensation must declare the nature and existence of the dispensation before the commencement of any Council business to which it relates. The declaration will be recorded in the minutes of the meeting.

11. RECORD OF DISPENSATIONS GRANTED AND REFUSED

The decision to grant or refuse a dispensation, will be recorded in writing and kept with the Register of Members' Interests, maintained by the Monitoring Officer.

⁴ Available as a web form on the Council's website

MEMBER DISPENSATION APPLICATION

Please provide full details in support of your application for a dispensation. You should refer to the accompanying 'Dispensations Procedure Guide'. If you need any help completing this form, please contact the Head of Legal Services legal.services@dartford.gov.uk

Your Name	Councillor
The decision making body <i>and</i> the business for which you require a dispensation (<i>refer to agenda item</i>)	
Details of your interest in that business	
Date of meeting only or a period (<i>up to 4 years</i>) for which dispensation is sought	
Dispensation requested to participate (speak only) in any discussion of that business by the decision making body	
Dispensation requested to speak and participate in any vote taken on that business by the decision making body	
Specify which of ground you consider relevant to your request:	<i>Tick the relevant Ground</i>
(a) so many members of the decision making body have a disclosable pecuniary interest or prejudicial interest that it would impede the transaction of the business (<i>i.e. meeting inquorate</i>); or	Ground A <input type="checkbox"/>
(b) without the dispensation the representation of different political groups on the decision making body would be so upset as to alter the likely outcome of any particular vote; or	Ground B <input type="checkbox"/>
(c) the dispensation is in the interests of persons living in the area; or	Ground C <input type="checkbox"/>
(d) no Cabinet member would be able to participate on the matter without a dispensation	Ground D <input type="checkbox"/>
(e) it is otherwise appropriate to grant a dispensation.	Ground E <input type="checkbox"/>
AND Please provide full reasons why you consider a dispensation is necessary (use a continuation sheet)	

Signed

Dated:

Councillor

Please return your completed form to the PA to the Strategic Director (Internal Services) – carol.butcher@dartford.gov.uk