

**CITY AND COUNTY OF CARDIFF
DINAS A SIR CAERDYDD**

STANDARDS & ETHICS COMMITTEE

29 JANUARY 2008

APPLICATION FOR DISPENSATION

Background

1. The Committee has statutory authority to grant dispensations to Members of a relevant authority with a personal interest in a matter, allowing them either to speak and vote or to vote (depending on the nature of the interest).
2. The Committee's agreed policy for granting such dispensations is attached for information at **Appendix A**. This Policy recites the grounds on which dispensations may be granted by the Committee.
3. At its meeting on 27th November 2007 the Committee considered various applications for dispensation submitted by the Clerk to Radyr and Morganstown Community Council on behalf of a number of its Community Councillors, including one from Community Councillor Judith Marsh in respect of her personal interest as a Community Council nominated member of Taffs Well Quarry Liaison Committee.
4. The Committee considered the application and resolved that dispensation be granted for Community Councillor Marsh to speak but not vote at meetings of the Community Council on matters relating to the Taffs Well Quarry.

Issues

5. Following further discussions with the Clerk to the Radyr and Morganstown Community Council, it has been clarified that Community Councillor Marsh seeks dispensation to allow her to speak and vote on matters relating to the Taffs Well Quarry *Liaison Committee*, rather than the Quarry itself; and that Community Councillor Marsh has no personal interest in the Quarry.

6. The Committee are requested to re-consider the application from Community Councillor Marsh on the basis of the clarification set out in the paragraph above.

Legal Implications

7. The Committee has approved a general policy on the grant of dispensations and may wish to refer to this policy, but is not bound by it in any particular case and the policy may not fetter the proper exercise of Committee's discretion. Each individual case must be considered on its own facts and merits. The recommendation set out below is legally achievable.

Financial Implications

8. There are no financial implications arising from this report.

Recommendation

That the dispensation granted to Community Councillor Judith Marsh on 27 November 2007 be amended to grant dispensation in accordance with Section 81(4) of the Local Government Act 2000 and Regulations 2(d) and (f) of the Standards Committee's (Grant of Dispensation Wales) Regulations 2001 to speak and vote at meetings of the Radyr and Morganstown Community Council or any of its committees or sub-committees on matters relating to Taffs Well Quarry Liaison Committee (provided that the dispensation shall not apply where Community Councillor Marsh has an interest other than the one referred to above).

Kate Berry
City and County Solicitor
21 January 2008

Appendices

Appendix A – Council Policy on Dispensations

CITY AND COUNTY OF CARDIFF
STANDARDS AND ETHICS COMMITTEE

Policy on Dispensations

Policy Background and Objectives

1. Guidance from the National Assembly for Wales regarding dispensations states that “*the dispensation regime is necessary to perform three functions: to deal with interests that Members share with a large proportion of the public, to allow the proper conduct of business, and to enable the participation rules to be applied to take account of individual circumstances*”.
2. The Standards & Ethics Committee wishes to secure maximum participation in democratic debate by its management of the dispensations process, while maintaining public confidence in the conduct of elected representatives.
3. The Committee has identified a policy framework which it will take into account when considering applications for dispensations as follows: -
 - a Safeguarding the ability of councillors and co-opted members to properly represent their community;
 - b The need for councillors in particular to be able to participate in the workings of relevant outside bodies, including school governors, community associations, companies and trusts formed with the specific purpose of furthering council objectives;
 - c The ability to distinguish between interests that are of a more technical nature and those which are likely to substantially influence the judgement and objectivity of individual councillors or co-opted members;
 - d When Members are appointed by the Council to outside bodies, for example to school governing bodies, they can speak but not vote on matters. The Standards & Ethics Committee welcomes requests for dispensation to allow Members to vote in these

circumstances to enable full participation, subject to there being any personal pecuniary interest.

e When Members have a personal financial or other pecuniary interests in an issue, it will rarely be possible to grant dispensations when the matter under discussion impacts directly upon that interest.

Statutory Framework

4. Part III of the Local Government Act 2000 covers the conduct of Members, and section 81(4) the Act states that – *“Any participation by a member or co-opted member of a relevant authority in any business which is prohibited by the mandatory provisions is not a failure to comply with the authority's code of conduct if the member or co-opted member has acted in accordance with a dispensation from the prohibition granted by the authority's standards committee in accordance with regulations made under subsection (5)”*.
5. The Standards & Ethics Committee has power to grant dispensations to Members to participate in Council business, but these are limited by (among other provisions) the Standards Committees (Grant of Dispensations)(Wales) Regulations 2001. In these regulations, regulation 2 sets out the following circumstances in which the Standards & Ethics Committee, under section 81(4) of the Local Government Act 2000, may grant dispensations–
 - a. no fewer than half of the members of the relevant authority or of a committee of the authority (as the case may be) by which the business is to be considered has an interest which relates to that business;
 - b. no fewer than half of the members of a leader and cabinet executive of the relevant authority by which the business is to be considered has an interest which relates to that business and either paragraph (d) or (e) also applies;
 - c. in the case of a county or county borough council; the inability of the member to participate would upset the political balance of the relevant authority or of the committee of the authority by which the business is to be considered to such an extent that the outcome would be likely to be affected;
 - 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;

- e. the interest is common to the member and a significant proportion of the general public;
- f. the participation of the member in the business to which the interest relates is justified by the member's particular role or expertise;
- g. the business to which the interest relates is to be considered by an overview and scrutiny committee of the relevant authority and the member's interest is not a pecuniary interest;
- h. the business which is to be considered relates to the finances or property of a voluntary organisation of whose management committee or board the member is a member otherwise than as a representative of the relevant authority and the member has no other interest in that business provided that any dispensation shall not extend to participation in any vote with respect to that business; or
- i. it appears to the committee to be in the interests of the inhabitants of the area of the relevant authority that the disability should be removed provided that written notification of the grant of the dispensation is given to the National Assembly for Wales within seven days in such manner as it may specify.

Procedures

6. Applications for dispensation may be made to the Monitoring Officer by using the form available, not less than ten days before the date of a meeting of the Standards & Ethics Committee. A standard form has been prepared for this purpose and is attached. The request for a dispensation must be accompanied by details of the member's interest, together with relevant details, including the matter in respect of which dispensation is sought. Joint applications may be made where more than one member of the authority seeks dispensation to speak or vote on the same matter. Dispensation may be given to either speak and vote or to speak only.
7. Currently, as the old legislation referring to dispensations has not been repealed, if an interest is a pecuniary interest, then it will still be necessary for the Member to apply to the National Assembly for

Wales for dispensation, to abide by the old legislation, as well as applying to the Standards and Ethics Committee. This situation will continue until the old legislation is repealed.

8. Further advice may be obtained from the Monitoring Officer or (in the case of Cardiff Council Members or co-opted Members), any Solicitor in the Council's Legal Services area. Community Councillors should initially seek the advice of their Clerk.