

DISPENSATIONS GUIDANCE

Introduction

During the meeting of the committee in June 2022 dispensation requests were considered in relation to

- Farming and Agricultural matters generally
- The provision of social care services in Carmarthenshire and across the Southwest Wales Region

In both cases dispensations were granted to speak/make written representations but not vote and were subject to certain caveats.

Committee members have asked for further guidance in relation to such dispensation requests given how wide ranging they can be in nature, scope, and effect.

Legislation and Guidance

There appears to be no specific legislative provision or statutory guidance on this precise issue. Regulations prescribe the grounds upon which a dispensation can be granted and these are set out in the dispensation application form. The executive summary in the covering report references the relevant legislation and the one paragraph of the Ombudsman's guidance that may be considered relevant.

Basic Principles

The first point the committee needs to remember is that any dispensation only applies where the member in question has a personal and prejudicial interest in an item of council business which would otherwise prevent their participation. If the member does not have that interest in the item of business, then they can participate fully irrespective of what the dispensation says.

So, taking the farming dispensation as an example, if the item of council of business is a motion on notice calling on supermarkets to only sell Welsh lamb, a dairy or arable farmer may well not have a personal and prejudicial interest in that motion (as it does not relate to or be likely to

affect their farming business) and will therefore be able to participate fully (including vote) without having to rely on their dispensation.

In contrast a sheep farmer would have a personal and prejudicial interest in that motion and therefore would have to rely on their dispensation to participate.

Invariably there will be individual councillors who fall between these two ends of the spectrum. Councillors who rent out land to sheep farmers for example would have to carefully consider their personal position in such a situation and may have to rely upon their dispensation to participate even though the main part of their personal farming activity is not sheep farming.

The second point the committee needs to remember is that in considering a dispensation application it is conducting a balancing exercise. As the Ombudsman's guidance says

“The Standards Committee will need to balance the public interest in preventing members with prejudicial interests from taking part in decisions, against the public interest in decisions being taken by a reasonably representative group of members of the authority”

This will invariably need to be determined on a case-by-case basis and it is quite reasonable for the committee to conclude in a particular case that the balance of the public interest is in favour of allowing a member to speak/make written representations but not vote. It would appear from the wording of the Ombudsman's guidance that a factor in the committee's conclusions would be whether there would still be a 'reasonably representative group of members' available to make a decision, if the dispensation application were refused or only granted to speak/make written representations. What constitutes a 'reasonably representative group of members' will depend on the facts of each application.

Alternative Approach

The practice of granting broad dispensations of the nature outlined above is relatively new, the first being granted in 2017 because of a motion on notice at full council. Since then, similar broad dispensations have been granted on 6 occasions, including the 2 granted at the

meeting in June. These dispensations have related to a wide variety of interests and to councillors across the political spectrum.

In line with advice given to councillors at code of conduct training sessions, members have been encouraged to be pro-active in seeking dispensations where they consider that they are likely to have a personal and prejudicial interest at some point in upcoming council business.

The alternative approach would be to expect members to apply for a dispensation each time an item of council business arises in which they have a prejudicial interest. However quite often members will not have sufficient warning that a particular item of business will be on the agenda to enable them to apply for a dispensation.

Taking the recent social care services dispensation as an example a motion on notice on this subject need only be submitted to the Chief Executive 7 clear working days before the meeting at which it is to be considered. The meeting agenda and reports must then be published at least 3 clear days before the meeting.

The first the member may know of the motion would be when they receive the agenda for the meeting. Clearly it would not be possible for that member to apply for a dispensation and have their request considered by the committee within 3 days.

Requiring the member to apply for a dispensation each time a specific item of council business arose regarding the provision of social care services (and in which he considered he had a prejudicial interest) would therefore have the practical effect of excluding him from the consideration of such business even though, in line with the Ombudsman's guidance, the committee might feel that the balance of public interest was in favour of allowing him to participate on that occasion.

Conclusion

The Committee's annual report has in recent years contained the statement that

"The Committee continues to approach each application with a presumption in favour of granting a dispensation wherever practicable, particularly in relation to granting a dispensation to speak only." [my emphasis]

The Committee has tended to draw a distinction between dispensations to speak only and dispensations to speak and vote and this approach is fully justified provided they consider each application on its on individual merits.

Where the members of the committee consider the balance of public interest lies in each individual case is a matter for them to decide based on the particular facts of that case.

Granting broad dispensations of the sort given in June has the effect of enabling councillors to participate in council business which they may otherwise be excluded from in practice due to having insufficient time to make a specific dispensation application.