

CLAPHAM PARISH COUNCIL

DISPENSATION POLICY

1 Applicability

The statutory basis for the rules is to be found in the Localism Act 2011 sections 33 and 31(1) and (4).

The authority may on a written request made to the proper officer by a member or co-opted member of the authority grant a dispensation (a) relieving the member or co-opted member from either or both of the restrictions in section 31(4) of the Localism Act in cases described in the dispensation and/or (b) relieving the member or co-opted member from the restrictions in the Code of Member's Conduct in cases described in the dispensation.

2 Existing dispensations

All dispensations granted before 1st August 2018 will cease to apply.

3 Rules

Dispensations may only be granted by Council acting on a written request from a member. However, it is recognised that on occasions during debate a member may realise that dispensation would be required to be able to continue in the debate and or to vote on a decision. Depending on the matter being discussed, the member shall follow the procedure below or the Council grants dispensation but only under para 4 section 4.3.1 below and only for that meeting. However, this action must not be used to prevent a matter being deferred to a future meeting where the proper procedures for dispensation will be followed.

4 Legal Criteria

4.1 If a member or co-opted member of the authority

(a) is present at a meeting of the authority, or of any committee, and
(b) has a disclosable pecuniary interest and/or a prejudicial interest in any matter to be considered, or being considered at the meeting, the member or co-opted member may not participate in the matter.

4.2 These rules apply:

4.2.1 to either or both of the prohibitions from participation set out in the Localism Act 2011 section 31(4) concerning the matter in which a member or co-opted member has a disclosable pecuniary interest; and

4.2.2 to prohibitions from participation concerning a matter in which a member or co-opted member has a prejudicial interest.

Section 31(4) of the Localism Act 2011 provides in relation to disclosable pecuniary interests:

“(4) The member or co-opted member may not –

(a) participate, or participate further, in any discussion of the matter at the meeting, or
(b) participate in any vote, or further vote, taken on the matter at the meeting but this is subject to the Code of Member's Conduct that provides in relation to prejudicial interests:

“(1) Where you have a prejudicial interest in any business of your authority:

(a) you must withdraw from the room or chamber where a meeting considering the business is being held

(i) in a case where subparagraph (2) applies, immediately after making representations, answering questions or giving evidence;

(ii) in any other case, whenever it becomes apparent that the business is being considered at that meeting; unless you have obtained a dispensation from your authority.”

4.3 A dispensation can only be granted if after having had regard to all relevant circumstances the authority:

4.3.1 considers that without the dispensation the number of persons prohibited by section 31(4) from participation in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business, or

4.3.2 considers that without 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, or

4.3.3 considers that granting the dispensation is in the interests of persons living in the authority's area, or

4.3.4 considers that it is otherwise appropriate to grant a dispensation.

5 Maximum period

A dispensation will specify the period for which it has effect and the period specified may not last for more than 4 years from the date of the giving of the dispensation.

6 How to apply for a dispensation

If a member wishes to seek dispensation to enable him or her to participate in the consideration of a matter from which he or she would be excluded by the provisions of section 31(4) of the Localism Act 2011 or the Code, he or she should write to or email the Clerk a request for a dispensation explaining why it is desirable for a dispensation to be granted. At least six days' notice must be given before the dispensation is required to enable all necessary consultations to be undertaken. Reference is to be made to para. 3 above.

7 Records

The authority will record the existence, duration and nature of any dispensation and the record is to be kept with the register of members' interests and a copy provided to the authority's monitoring officer.

8 The authority's consideration of an application for dispensation

The following is a summary of what might be regarded as good practice in considering an application for a dispensation:

8.1 Dispensations should be granted only in exceptional circumstances.

8.2 Dispensations cannot be granted other than in the circumstances set out in the Localism Act 2011 Section 33(2) set out in paragraph 4.3 above.

8.3 A dispensation cannot authorise a member to act unlawfully.

8.5 Any dispensation that has already been granted will be ignored when applying the legal criteria in paragraph 4.

8.6 The interest of the member seeking the dispensation will be balanced against the potential effect of the outcome of the vote if the member is unable to participate.

8.7 A dispensation may be granted to enable a member to speak only or to speak and vote.

8.8 A dispensation should not be granted where the dispensation would conflict with the general principles which underlie the Code of Members' Conduct:

8.8.1 Selflessness—members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

8.8.2 Integrity—members should not place themselves in situations where their integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.

8.8.3 Objectivity—members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

8.8.4 Accountability—members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

8.8.5 Openness—members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.

8.8.6 Honesty – Members should not place themselves in situations where their honesty may be questioned, should not behave dishonestly and should on all occasions avoid the appearance of such behaviour.

8.8.7 Leadership – members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.

8.9 A dispensation should not be granted where the nature of the member's interest would damage public confidence in the conduct of the authority's business were the dispensation to be granted.

8.10 If a dispensation is granted it should usually be for one specific item of business at one meeting of the authority.

8.11 Section 31(4) of the Localism Act 2011 does not apply in relation to anything done for the purposes of deciding whether to grant a dispensation under this section.

Dated September 2018