**Report No.** **06/11**

 **Standards Committee**

**REPORT OF THE MONITORING OFFICER**

**SUBJECT: DISPENSATIONS**

History

We have in the past periodically looked at the issue of dispensations and the Standards Committee approach to these.

Historically, since 7th February 2002 all members of PCC have been granted a dispensation on planning applications submitted by PCC allowing them to speak and vote as otherwise the Authority could not exercise any of its functions as it would be inquorate. The Standards Committee modified this in 2009 to grant the dispensations to named Councillors so that it was clear it applied to each of them personally.

The only other dispensation that has been granted, apart from this generic one, relates to former Members of the Authority Mr Gordon Cawood and Mrs Jane Major to speak on issues arising from Bluestone in 2003.

There has not been any individual application by a Member for a dispensation since I was appointed in November 2008.

Since that time I have revisited the issue once in 2009 and it was decided to take the matter no further.

Reason for agenda item

Since that time issues have emerged which highlight the differences in corporate governance between the Authority and PCC. Whilst it is a statement of the obvious, that it is up to each Member to decide if he or she has a personal and/or prejudicial interest, I felt there should be some guidance both for Members and for the Standards Committee in how it should generally approach the issues of granting dispensations i.e. to consider a policy/protocol in advance rather than have to decide a policy in response to an application. I believe Members are entitled to know how the Standards Committee would approach requests in the future.

PCC has a Cabinet system of government. There are at present three PCC Cabinet members who sit on the Authority and by reason of this on the Development Management Committee which decides on planning applications. They also sit on other committees and are Members of the Authority itself when it sits as the National Park Authority and their primary obligation is to represent the interests of the NPA as a whole. This is not about whether they have a personal and/or prejudicial interest but rather that when making all decisions they must do so on the basis of the merits of the circumstances involved and in the public interest – that is, not just the members of the public in their particular constituency but those who live in, work in and visit the National Park’s area.

The Code of Conduct does find some expression of this in Paragraph 10(2)(b) which describes as a personal interest any matter where members of the public might reasonably perceive a conflict between a Members’ role in taking a decision on behalf of the Authority as a whole and in representing the interests of constituents. This really has no application within the National Park Authority, however, because there are no local constituents when Members serve on the Authority. The responsibility is to represent the interests of the whole of the Park area, notwithstanding that Members are able to bring to bear their specific knowledge of a particular area of the Park in the decision making process.

There are occasions when an executive decision has already been made by PCC and as a consequence of that a planning application is made.

This can also give rise to a problem over predetermination and predisposition. The Localism Bill in Clause 14, is proposing changes to the traditional approach to predetermination and predisposition. The boundaries are becoming blurred and with the proposed abolition of the Standards Board in England, how it will operate in Wales is a matter of conjecture, but my most recent research suggests that Section 14 will not apply in Wales.

The UK Government’s view is that:

*“Decisions taken by those who have a predetermined view or who are biased may, quite rightly, be quashed by the courts. However, concerns about the issue of predetermination have led to councillors being prevented from speaking or voting on issues simply because they have spoken about them previously or expressed a view. They may even have been elected because of their views on a particular issue. This is an infringement of a councillor’s right to hold and express a view and assumes that they are unable to approach and consider an issue with an open mind. The Government wishes to clarify the existing law to ensure that councillors are free to campaign, speak and vote without worrying about being accused of predetermination or bias.” [[1]](#footnote-1).*

In my view the position is clear in that the Courts have given guidance recently in two cases which show that there has to be proof to show a closed mind of a decision maker before any finding of bias can be found and upheld.

Recommendation

That the blanket dispensation should be revoked for PCC Cabinet Members who have already discussed or voted in cabinet on any application for planning permission. They should apply for dispensations individually in advance from the Standards Committee if they wish to participate in debates or vote on those applications.

*(For further information, please contact John Parsons on ext. 4904)*

1. Localism Bill: the abolition of the Standards Board regime, clarification of the law on predetermination and the requirement to register and declare interests [↑](#footnote-ref-1)