

Agenda Item No: **Report No:**
Report Title: **Request for Dispensation – Councillor G Collier, Newick Parish Council**
Report To: **Standards Committee** **Date:** **4 August 2009**
Ward(s) Affected: **Newick**
Report By: **District Solicitor and Monitoring Officer**
Contact Officer(s): **Catherine Knight**
telephone 01273 484118 catherine.knight@lewes.gov.uk

Purpose of Report:

To inform the Committee of a request for a dispensation on behalf of Councillor Graham Collier, received from the clerk to Newick Parish Council.

Officer's Recommendation:

- 1 A dispensation cannot be granted because the criteria for granting one are not satisfied.

In most circumstances Councillor Collier's interest will amount to a personal one, but not a prejudicial one, and he will therefore be able to participate. The Monitoring Officer should write to the clerk to Newick Parish Council and to Councillor Collier advising them of:

- the effect of the Standards Committee (Further Provisions) (England) Regulations 2009.
- the circumstances in which Councillor Collier may/may not participate in Council business which affects the village hall.

Reasons for Recommendations

- To comply with the provision of The Standards Committee (Further Provisions) (England) Regulations.
- To ensure that Councillor Collier and the clerk to Newick Parish Council are aware of those circumstances in which Councillor Collier may/may not participate in Council business which affects the village hall.

1 Information

- 1.1 Section 81(4) of the Local Government Act 2000 provides that any participation by a councillor or co-opted member in any business which is prohibited by the Code of Conduct is not a failure to comply with the

Code if the councillor, or co-opted member has acted in accordance with a dispensation from the prohibition which is granted by the authority's standards committee in accordance with regulations made under subsection (5) of the 2000 Act.

- 1.2 Lewes District Council's Standards Committee is the relevant standards committee for those towns and parishes with Lewes district.
- 1.3 The Secretary of State has made regulations prescribing the circumstances in which Standards Committees may grant dispensations to councillors or co-opted members who would otherwise be prohibited from engaging in the business of a relevant authority.

These are "The Standards Committee (Further Provisions) (England) Regulations 2009" which came into effect on 15 June 2009 (revoking the earlier "Relevant Authorities (Standards Committees) (Dispensations) Regulations 2002").

- 1.4 The 2009 regulations allows standards committees to grant dispensations in two circumstances only:
 - (a) where more than 50% of the members who would be entitled to vote at a meeting are prohibited from voting; or
 - (b) where the number of members that are prohibited from voting at a meeting would upset the political balance of the meeting to the extent that the outcome of voting would be prejudiced.

(The issue of "political balance" is a legal formula set out in the Local Government and Housing Act 1989 and associated regulations. It applies only to "relevant authorities" and places an obligation on them to reflect the political balance of their elected members when determining who should sit on certain committees. It does not apply to town/parish councils).

- 1.6 The fact that the political balance rules do not apply to town/parish councils means that (a) above is the only ground on which any dispensation may be granted to one or more members of a town/parish council.
- 1.7 The clerk to Newick Parish Council has written to request a dispensation on behalf of Councillor Graham Collier. Her request, and associated correspondence, is attached at Appendix 1.
- 1.8 A new model Code was published and adopted by local authorities in 2007.

The new Code was in part a response to criticisms that the old Code was unnecessarily restrictive in preventing councillors from speaking and/or voting on matters.

- 1.9 The new Code defines "prejudicial interests" in such a way that the occurrence of a prejudicial interest is much rarer than previously. It also

allows councillors to make representations and answer questions, but not vote, in circumstances where they have prejudicial interests.

1.10 A dispensation cannot be granted in this case because the criteria set out in the 2009 regulations are not satisfied.

1.11 The circumstances in which Councillor Collier will have a prejudicial interest are likely to be infrequent. Certainly, his appointment as the Parish Council's representative on the Village Hall Management Committee constitutes a personal interest which he must disclose at council meetings where matters relating to the village hall are considered.

However, by virtue of paragraph 10 of the Code, his personal interest will not be a prejudicial one unless the matter under consideration will either affect the financial position of the village hall or relates to the determining of something such as a planning permission or liquor licence for the village hall. If his interest is not prejudicial then Councillor Collier may participate in the debate and vote.

1.12 The Monitoring Officer's records show that when Newick Parish Council adopted their current Code of Conduct on 15 May 2007 they adopted discretionary paragraph 12(2). The effect of this is that even in those cases where Councillor Collier does have a prejudicial interest he may make representations, answer questions and give evidence provided members of the public are allowed to attend the meeting for the same purpose.

1.13 It is suggested that the Monitoring Officer contacts the clerk to Newick Parish Council to clarify when Councillor Collier does/does not have a prejudicial interest.

2 Financial Appraisal

There are no financial implications arising as a result of this report.

3 Environmental Implications

I have completed the Environmental Implications Questionnaire and there are no significant effects as a result of these recommendations.

4 Risk Management Implications

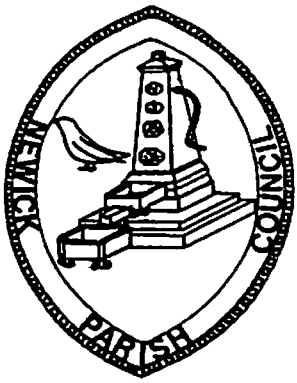
I have completed the Risk Management questionnaire and this Report does not require a risk assessment because the changes/issues covered by this Report are not significant in terms of risk.

5 Background Papers

None.

6 Appendices

Appendix 1 – A letter from the clerk to Newick Parish Council requesting a dispensation on behalf of Councillor Graham Collier together with associated correspondence.



NEWICK PARISH COUNCIL

Ms Catherine Knight
District Solicitor and Monitory Officer
Legal Services for Lewes District Council
Lewes House
32 High Street
Lewes
East Sussex
BN7 2LX

8th June, 2009

Dear Ms Knight,

Please find copies of correspondence relating to the Code of Conduct – Prejudicial Interest which was sent to SALC and to the subsequent reply. My Council would like to ask for dispensation for Cllr. Graham Collier to speak on items ascertaining to his position on the Village Hall Management Committee to which the Parish Council has appointed him as its representative.

As Cllr Collier is the Parish Council's appointed representative on the Village Hall Management Committee it is all but impossible for him to discharge that role if he has to absent himself from Council discussions on the Hall. Nevertheless as a member of the Village Hall Management Committee he is one of the Trustees of that Charity.

The Parish Council is also the Custodian Trustee for Newick Village Hall. It is assumed that none of these issues arise when the Parish Council meets as the Custodian Trustee.

Yours sincerely

Linda M. Farmer
Clerk to the Council

Linda Farmer (NewickPC)

From: "Trevor Leggo" <Trevor.Leggo@ruralsussex.org.uk>
To: <newickpc@btinternet.com>
Sent: 02 June 2009 09:37
Subject: Prejudicial interest
Dear Linda

In response to your letter of 29th May the Code is quite clear ; if your Council has adopted 12[2] those councillors who have declared a prejudicial interest may remain in the meeting, but leave the room immediately after making representations, answering questions or giving evidence. This must happen unless the councillor concerned has obtained dispensation from the Monitoring Officer for some special reason

Hope this helps

Trevor

Mr. Trevor Leggo
Chief Executive for SALC
Sussex House
212 High Street
Lewes
East Sussex

29th May, 2009

Dear Mr. Leggo,

Code of Conduct

Prejudicial Interest

Newick Parish Council elects, annually a Councillor, to be their Representative on the Village Hall Management Committee. The Village Hall is a Charity. At the same time the Parish Council is the Custodial Trustee of the Village Hall.

The practicality of this Representation is that the selected Councillor effectively acts as the link between the two bodies reporting to each the views, opinions strategies and decisions of the other. When necessary the Councillor produces written reports/papers for consideration of each body.

The selected Councillor is also usually instrumental in initiating formal meetings of the Custodial Trustee body.

It is a reasonable statement to make that the selected Councillor generally understand more than the rest of the Council the various facts, laws, regulations – all the complexities associated with Village Halls & Councils i.e. Charity Commission requirements , vat rules etc.

Under the Code of Conduct it would seem that the selected Councillor has a prejudicial interest in all matters relating to the Village Hall yet if the Cllr has to leave Council Meetings after stating a view, making a proposal, suggesting a course of action (i.e. what actions are necessary to fulfil the role of Custodial Trustee) the Council is deprived of the very individual intended to ensure effective co-ordination of the two bodies – not always without tensions within Village Politics.

Indeed the Council needs to instruct the selected Councillor not only the fact of its decisions but the essence behind those decisions embodied in the debate & discussion to carry that forward to the Village Hall Committee.

If because of the prejudicial interest the selected Cllr cannot take part in any Votes or decisions the Cllr should still be able to take full part in the discussion – the selection as the Representative conferred that role.

We would appreciate your advice.

Yours sincerely

Linda M. Farmer
Clerk to the Council