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CYNGOR SIR YNYS MON / ISLE OF ANGLESEY COUNTY COUNCIL

MEETING:	STANDARDS COMMITTEE
DATE:	12 SEPTEMBER 2013
TITLE OF REPORT:	GENERIC DISPENSATION - INDEMNITIES
PURPOSE OF THE REPORT:	TO AVOID THE NEED FOR ANY INDIVIDUAL APPLICATIONS DURING THE CURRENCY OF THIS COUNCIL
REPORT BY:	HEAD OF FUNCTION LEGAL AND ADMINISTRATION/MONITORING OFFICER
CONTACT OFFICER:	LYNN BALL, HEAD OF FUNCTION LEGAL AND ADMINISTRATION/MONITORING OFFICER (ext 2586)

1. INTRODUCTION & BACKGROUND

Pursuant to the County Council's Code of Conduct for elected Members, any Member who has a personal and prejudicial interest in an item of business is precluded from participation. In some limited, and specified, circumstances a Member may be able to overreach the impediment created by the personal and prejudicial interest if they are able to obtain a dispensation from the County Council's Standards Committee.

2. PROCESS

Any Member wishing to obtain a dispensation must put an application in writing, identifying the impediment and the grounds upon which the application is sought. The Standards Committee, or a properly constituted Panel of the Standards Committee, will then hear the application. The Hearing will usually be in public. The Standards Committee has a discretion on whether or not to grant the dispensation sought and to impose any restrictions or limitations as appropriate to the circumstances of the application.

3. APPLICATION

The application appears at **Enclosure 1** and the circumstances for which the dispensation is sought are set out in paragraph 6 thereto. The grounds upon which the dispensation is sought are set out in paragraph 7.

4. RECOMMENDATION

To grant the dispensation as worded in **Enclosure 2**.

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APPLICATION TO THE STANDARDS COMMITTEE FOR DISPENSATION PURSUANT
TO SI 2001 No. 2279 (W. 169)

1. **Name of Applicant** : All Members of the Isle of Anglesey County Council.
Full list is attached at **Enclosure 1**

2. **Address of Applicant** : Please see **Enclosure 1**

3. **Relevant Authority** : Isle of Anglesey County Council

4. **Committee/Committees** : Indemnities Sub-Committee

5. **Interest Registered pursuant to Section 81 (1) & (2) of the Local Government Act 2000** :

n/a

6. **Details of interest in respect of which Dispensation sought** :
 - The Isle of Anglesey County Council has adopted an Indemnities Policy **Enclosure 2**.
 - The Policy enables Members, in some circumstances, to make applications to the Council to secure an indemnity for their legal costs. In practice, this will usually relate to costs to be incurred in defending allegations brought under the Members' Code of Conduct.
 - The Council has delegated its decision making power to the Indemnities Sub-Committee.
 - Any Member wishing to apply for an indemnity must submit an application in writing to the Sub-Committee, which will then meet to consider the application.
 - The applicant may pursue their application in one of three ways:-
 1. Request the Sub-Committee to consider the application on the papers only; or
 2. Instruct their legal representative to present the application and answer any questions; or
 3. Appear in person to present their application and answer any questions.

- Should a Member choose to exercise their right to attend in person then, as matters currently stand, they would breach the Members' Code of Conduct as the combination of their application, and their attendance at the meeting, would create a personal and prejudicial interest. A copy of the Code, with the relevant sections highlighted, is attached. **Enclosure 3**
- This situation has the potential to cause serious prejudice to any Member who wishes to exercise their right to appear before the Indemnities Sub-Committee, particularly as any legal costs incurred at that stage will not be recoverable; the Policy only providing for indemnity from the point at which the Sub-Committee grants any indemnity. It has no retrospective powers.
- The only way to avoid this potentially unfair outcome is for the Standards Committee to grant a dispensation. As Monitoring Officer, I am making this application to the Standards Committee for a generic dispensation on behalf of all Members of the County Council.
- Accordingly, this application is lodged for the benefit of all Members of the County Council. Clearly, applications for indemnities are rare and any generic dispensation granted is unlikely to be utilised by more than a few Members. However, this course is recommended as a pragmatic approach to avoid a series of individual applications, all relying upon the same statutory grounds.
- An application for indemnity may be made at any time after the Public Services Ombudsman for Wales (PSOW) has decided to investigate. At present, from among the County Council's thirty Members, there are no matters currently under consideration by the PSOW.

7. **Statutory Grounds relied upon in support of the Application :**

It is suggested that the grounds under which a dispensation may be granted under the Standards Committee (Grant of Dispensation) (Wales) Regulations 2001 are :-

- **2.(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."
- **2.(f)** "the participation of the member in the business to which the interest relates is justified by the member's particular role or expertise"
- Some relevant factors which the Committee may wish to take into consideration in deciding whether to not to grant this application under the statutory grounds, reproduced above, are :
 - The Council's Policy reflects legislation which permits indemnities to be granted in certain circumstances.
 - A significant degree of information is required for the Indemnities Sub-Committee to decide an application, including a detailed justification for anticipated costs and an assessment of the merits of the defence.

- Any application submitted to the Indemnities Sub-Committee will be accompanied by a report from the Monitoring Officer (or her nominee) and advice is provided in person to the Sub-Committee by the Monitoring Officer (or her nominee) and the Section 151 Officer (or her nominee).
- Any indemnity granted will include suitable caveats and claw-back provisions in accordance with the legislation.
- The applicant would only be entitled to attend the meeting to put their case and answer questions. They are required to leave the meeting in order for the Sub-Committee to deliberate in private.
- In summary it is submitted that there is clear legislative intention to provide indemnities in appropriate circumstances, and that adequate safeguards exist within the system to protect “public confidence” **(2.(d))**
- It is clear that only the applicant can fairly and adequately present their application and answer questions and to insist on the instruction of a legal representative would be to put the Member at a financial disadvantage as those costs would not be recoverable under the Policy **(2.(f))**

8. **Date application submitted** : September 2013

9. **Date by which Decision required** :

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10. **Decision of Standards Committee** :

11. **Date Decision made** :

12. **Parties to be notified** :

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DISPENSATION GRANTED BY THE STANDARDS COMMITTEE
ON 12th SEPTEMBER 2013

The Standards Committee's Dispensation Panel unanimously agreed to the following :-

- Should the need arise, all current Members of the Isle of Anglesey County Council are hereby granted dispensation to attend before the Indemnities Sub-committee (or its successor, if any) to present any application they wish the Sub-committee to consider in accordance with the Policy and Procedure for Indemnities.
- This dispensation is granted under Standards committee (Grant of Dispensation) (Wales) Regulations 2001 2.(d) and 2.(f).
- Any Member exercising this right shall be entitled to present their application and answer questions, but any deliberations by the Sub-committee shall take place in private.
- This dispensation shall not prejudice the right of any Member to request that their application be considered on the papers alone, or their right to be represented by a legal advisor.
- This dispensation shall, if required, also extend to any consideration by the Standards Committee in accordance with their powers under the Local Authority's (Indemnities for Members and Officers) (Wales) Order 2006 when any Member shall be entitled to put their case in person to the Standards Committee, before the Committee retires to private session to consider the exercise of its statutory powers.
- This dispensation shall only apply to current Members of the Isle of Anglesey County Council and shall endure for the remaining term of this Council.

Standards Committee Co-Opted Members Only

12.09.2013