



Cornwall Association of Local Councils

Unit 1, 1 Riverside House, Heron Way, Newham, Truro TR1 2XN

DECLARING INTERESTS AND DISPENSATIONS

Every council must adopt a code of conduct to show how it lives up to the standards of public life. On joining the council each member will sign a declaration of acceptance of office. This is an undertaking to follow the council's code and to meet the standards of integrity, respect and leadership expected of a local councillor. An essential part of the code is the declaration of interests and this short FAQ should be read alongside your council's Code of Conduct and the [2021 Guide to the Code of Conduct](#).

Before considering what actions must be taken, it is essential that members think carefully about their links to the area, the residents and the community. It is these links which create interests and it is important that members are aware of their interests not only at the start of the meeting, but also during the meeting in case the discussion moves to include something which should be declared.

What is an interest?

A conflict of interest happens when a councillor has competing interests that could influence their decisions; where the public might believe that a member's personal links to an issue might interfere with their decision making.

To ensure that the public can have confidence in the integrity and transparency of their local councillors, a council must have a code of conduct which defines the categories of interest which must be declared in advance via a public register, and/or declared at every meeting where a decision is being made.

In deciding whether you have an interest a member must also consider whether their interest is greater than the majority of residents, the public perception of their link to the issue and whether they have an open mind on the matter.

Declaring interests and leaving the room

The Code of Conduct applies to all parts of the meeting including the public session. There will be an opportunity for members to declare their interests at the start of the meeting and these will be recorded in the minutes. If an interest becomes apparent during discussion, the member should declare this immediately.

The member must leave the room if the matter is being discussed during public speaking (on the item), during debate of the agenda item or immediately if an interest becomes apparent. They cannot stay in the meeting, take part in the discussion or vote. Their actions will be recorded in the minutes.

Under the Cornwall Code of Conduct there is no facility for a councillor with a declared interest, to use the public session to address the council or to remain in the room during discussion, even if they intend to abstain from voting. The Code of Conduct covers any meeting of the council including committees, sub committees and working groups. A member attending a committee meeting would still have to declare any interests and leave the meeting even if they were not part of the committee membership.

Outside Bodies

Councillors who are involved with outside bodies often have information which would be useful to the council when making a decision. Under the code of conduct (3.5a) a councillor with an interest in an outside community group i.e. clubs, facility management committee, community group, must declare the interest as normal but is able to make a short statement and answer any questions before leaving the room. The council can also call the member back if there any further questions at any time.

This part of the code does not allow the member to stay for the whole discussion and they must leave when asked to by the Chair.

Dispensations

The Council can give permission for a member to remain in the room and either take part in the discussion or take part in the discussion and vote in spite of their interest. These are known as ‘dispensations’ and must meet at least one of three tests :

- That the meeting or item would become inquorate – if there is no time to defer the item to a future meeting or the interest relates to a charity where all members have the same interest.
- That it is in the interests of the community – that there is a sound reason for the member remaining in the discussion i.e. where the interest relates to an outside body and council would benefit from their knowledge and input beyond the time allowed within the 3.5a participation above.
- There is some other significant reason why it would be appropriate – there would have to be a very sound reason and this element should not be used if there is no benefit to the wider community of the parish.

Granting Dispensations

- i) The agenda should include a standard item to receive and consider requests for dispensations received at or before the start of the meeting.
- ii) The request must be made in writing and include :
 - The agenda item
 - Which criteria apply
 - The period to be covered
 - Whether the member is requesting dispensation to take part in the discussion OR take part in the discussion and vote
- iii) Council will award any dispensation and the record should be kept by the Clerk

The CALC has produced [a guide to dispensations](#) which can be downloaded from the website.

Key Considerations

- i) A dispensation allows a member to participate on items where they have declared interests. The Council should consider when it is appropriate to include members in discussions and be sure that it is either necessary or beneficial to the community for them to do so.
- ii) It is recommended that dispensations should only be awarded on a meeting-by-meeting basis or for no longer than until the next annual meeting of the Council if the interest relates to the councillors as trustees.
- iii) Once granted a dispensation can only be removed by the Monitoring Officer after a finding of a breach of the Code of Conduct.
- iv) Where the Chairman is granted a dispensation they also resume chairmanship of the item and the casting vote. If members are requesting a dispensation to restore the quorum, consideration should be given to retaining the impartial majority and whether it is appropriate to award a dispensation to the Chair of the meeting.
- v) Dispensations should not be used for the benefit of an individual member e.g. the member’s planning application or to overcome member bias and predetermination.



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Serving the parish and town councils of Cornwall

A GUIDE TO AWARDING DISPENSATIONS 2012

1 Introduction

Parish Councils are now responsible for determining requests for a dispensation by a parish councillor under Section 33 of Localism Act 2011. This is because they are a "relevant authority" under section 27(6) (d) of the Act.

This guide explains:-

- a. the purpose and effect of dispensations
- b. the procedure for requesting dispensations
- c. the criteria which are applied in determining dispensation requests
- d. the terms of dispensations

2 Purpose and effect of Dispensations

In certain circumstances Councillors may be granted a dispensation which enables them to take part in Council business where this would otherwise be prohibited because they have a Disclosable or Non Registerable Pecuniary Interest. Provided Councillors act within the terms of their dispensation there is deemed to be no breach of the Code of Conduct or the law.

Section 31(4) of the Localism Act 2011 states that dispensations may allow the Councillor:

- a. to participate, or participate further, in any discussion of the matter at the meeting(s); and/or
- b. to participate in any vote, or further vote, taken on the matter at the meeting(s).

If a dispensation is granted, the Councillor may remain in the room where the meeting considering the business is being held and if the dispensation allows may also vote.

Please note: If a parish councillor participates in a meeting where he/she has a Disclosable Pecuniary Interest and he/she does not have a dispensation, they may be committing a criminal offence under s34 Localism Act 2011.

3 Process for making requests

Any Councillor who wishes to apply for a dispensation must fully complete a Dispensation Request form and submit it to the Proper Officer of the council (ie. the Clerk) as soon as possible before the meeting at which the dispensation is required.

Applications may also be made at the parish council meeting itself (if parish councils have a standing item on the agenda to deal with dispensation requests) and the nature of the interest has only become apparent to a councillor at the meeting itself.

4 Consideration by the Parish Council

The Parish Council can either delegate to the parish clerk the authority to grant dispensations or reserve such decisions for the full parish council.

In either case, the decision must be based on one or more of the following criteria :

- a. so many members of the decision-making body have Non Disclosable or Non Registerable Pecuniary Interests that it would impede the transaction of the business (ie. the meeting would be inquorate); or
- b. the authority considers that the dispensation is in the interests of persons living in the authority's area; or
- c. it is otherwise appropriate to grant a dispensation.

The parish clerk or parish council should formally notify the Councillor and the Monitoring Officer of its decision and reasons in writing at the earliest opportunity and in any event within 5 working days of the decision. A copy of any dispensation should be held with the Member's Register of Interests.

Delegation to the Clerk

If the parish council decides to delegate this role to the parish clerk then it will need to make a formal resolution to this effect, on the lines of:

"RESOLVE that the Council delegates the power to grant dispensations to the Clerk. The power rests with the relevant authority under section 33(1) of the Localism Act 2011 and the basis is set out under section 33(2).

5 Criteria for Determination of Requests

In reaching a decision on a request for a dispensation the parish council or the parish clerk (as appropriate) will take into account:

- a. the nature of the Councillor's prejudicial interest
- b. the need to maintain public confidence in the conduct of the Council's business
- c. the possible outcome of the proposed vote
- d. the need for efficient and effective conduct of the Council's business
- e. any other relevant circumstances

6 Terms of Dispensations

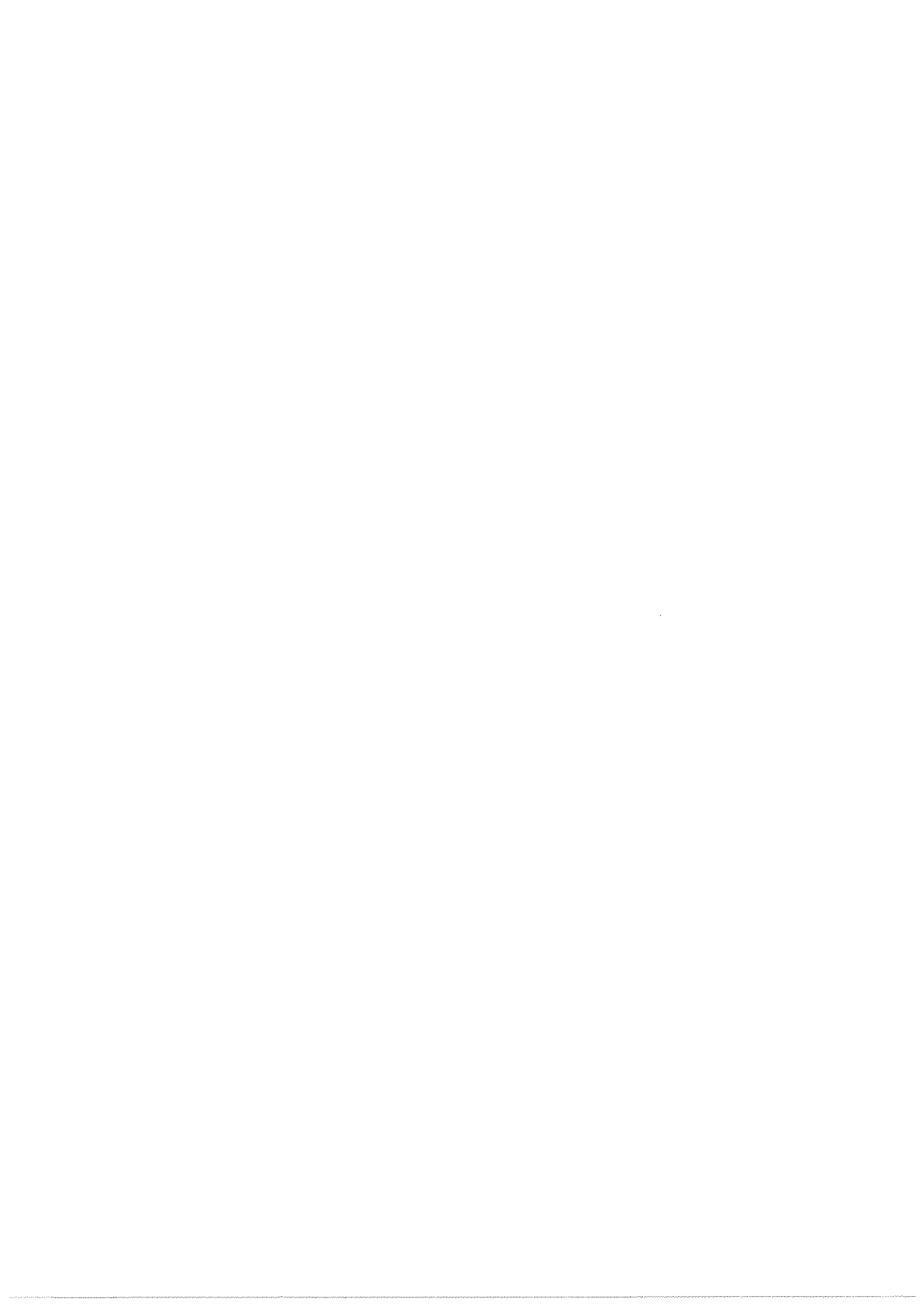
Dispensations may be granted:

- for one or more meetings of the Council; or
- for a named period not exceeding 4 years (normally the annual meeting after the next elections)

7 Disclosure of Decision

Any Councillor who has been granted a dispensation must declare the nature and existence of the dispensation before the commencement of any business to which it relates.

A copy of the dispensation will be kept with the Register of Councillors' Interests.





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METHODS OF VOTING

Voting by local councillors is an important part of the Council's decision-making process. Every decision requires a vote and this short guidance note summarises the principles of voting and various formats available to the council.

The principles of voting

- a. Only those members physically present at the meeting are eligible to vote. There is no provision for on line or proxy voting.
- b. There must be a minimum number of members present and eligible to vote on any item where a decision is required. This number is known as the quorum and is 3 or 1/3rd of seats on the council (regardless of any vacancies). Members who have left the room because of their interests, are not present in the meeting for the item and do not count towards the quorum. If an item is inquorate the council should consider either deferring the matter to a future meeting or granting a dispensation to sufficient members to restore the quorum. The CALC can provide advice on the awarding of dispensations.
- c. For a matter to be put to the vote it must be :
 - On the public agenda for the meeting advertised 3 clear days in advance of the meeting.
 - Be proposed and seconded by members attending the meeting. If a proposal is not seconded, it will fall. The proposal is a statement and the vote is whether or not to agreement with the statement/action.
 - Clear and easy to understand
- d. The proposal is a statement and the vote is to decide whether or not to agree with the statement/adopt the action. For a decision to be made, the number of votes cast for the motion must be more than the number of votes cast against the motion. A vote which defeats the motion does not mean that the council has agreed the opposite. For this to happen, a new proposal must be made, seconded and put to the vote.
- e. In the event of a tie, the Chairman of the meeting has a second, casting vote. There is no requirement to use this vote in the same way as the original vote.

VOTING BY SHOW OF HANDS

The normal mechanism of voting is by show of hands, where the Chair of the meeting asks for those in favour, those against and any abstentions.

There is no requirement to record the number of votes cast or whether the vote was unanimous or not, but it is good practice to record the names of the proposer and seconder of the motion.

RECORDED VOTE

A member is entitled to ask for the way in which each member voted to be recorded in the minutes. This is a recorded vote and does not need council approval for it to happen.

Method :

- i. Standing orders should be amended to require any request for a recorded vote to be made before the vote takes place.
- ii. The vote should be taken alphabetically where each member is asked how they are voting to enable the Clerk to keep an accurate record.
- iii. The minutes will record the names of the members who voted for or against the motion or abstained.
- iv. For the motion to be carried it still requires a majority in favour of the proposal and the role of the casting vote still applies.

WRITTEN BALLOT

On some occasions it is may be useful for the vote to be undertaken by written ballot where the outcome is more important than knowing which way individual members voted.

A written ballot is not a secret vote; it is a vote where only the clerk is aware of how individual councillors voted.

Method :

- i. Unless covered in standing orders, a request for a written ballot requires a proposal, seconded and a vote to agree the use of the written ballot for the item.
- i. The Clerk circulates one ballot sheet to each member present and eligible to vote.
- ii. Every voting member must record their name on the ballot paper and then the name of their preferred candidate.
- iii. The Count
 - a. Clerk collects all of the ballot papers and confirms that there are no duplicate ballot papers
 - b. The clerk then counts the votes for each candidate.
- iv. The voting process will be repeated until such time as a candidate has a clear majority as outlined in Standing Order 8 a).

NOTE : a request for a recorded vote can also be made and this will in practice cancel out any request for the anonymity of the written ballot.

Voting on Appointments

Where the vote refers to the appointment of individuals to offices of the council, the use of the written ballot ensures that the elected member is not influenced by who voted either for or against them. It is sufficient to know that they were elected to an office or co-opted to fill a vacancy.

Co-option to fill Casual Vacancies

It is good practice to use the written ballot for the co-option of new councillors to fill casual vacancies. It is important that the candidate has confidence in their selection and that personalities do not become involved. The written ballot also allows the council to demonstrate a majority, unattributable vote to fill the vacancy so that members can vote with confidence.

The CALC recommends that Standing Order 8 on the voting on appointments is amended to read as follows :

Voting on Appointments and Co-option to fill Casual Vacancies

- a) *Where more than two persons have been nominated for a position to be filled by the Council and none of those persons has received an absolute majority of votes in their favour, the name of the person having the least number of votes shall be struck off the list and a fresh vote taken. This process shall continue until a majority of votes is given in favour of one person. A tie in vote may be settled by the casting vote exercisable by the chairman of the meeting.*
- b) *Where more than two persons have been nominated for a position to be filled by the Council, the vote will be taken by a written ballot of those members present and eligible to vote. The Clerk will report the outcome of the vote [and report the votes cast for each candidate]*

There is no legal requirement to publish or record the number of votes cast for each candidate and the council should confirm whether this is the established practice and amend standing orders as necessary.

NOTE : a request for a recorded vote can also be made and this will in practice cancel out any request for the anonymity of the written ballot.

Other relevant guidance available to download from the CALC Website :

Guide to the awarding of dispensations and application form

Guidance on the filling of casual vacancies

