

16 May, 2007

## **The Report of the Standards Committee**

The Committee met at County Hall, Northallerton on Monday, 19 March, 2007. Present:- James F S Daghish in the Chair. County Councillors: William F Barton OBE and Brian Marshall. Independent Members: Ms Gillian Fleming and Professor Alan Lawton.

The Standards Committee met again at County Hall, Northallerton, on Monday, 19 March, 2007. Present:- James F S Daghish in the Chair. County Councillors: William F Barton OBE, Bernard Bateman MBE (as substitute for J W Marshall) and Brian Marshall.

The Committee will meet again on Wednesday, 9 May 2007 and a supplementary report will be issued thereafter.

**1. Appointment of Independent Members** – At its special meeting on 19 March, 2007, the Committee interviewed a number of short listed candidates for appointment to the Committee as Independent Members, since the term of office of Ms Gillian Fleming and Professor Alan Lawton comes to an end in May 2007.

### **The Standards Committee RECOMMENDS:-**

That Ms Gillian Fleming and Ms Janet Hoult be appointed as Independent Members of the Standards Committee to serve until the Annual Meeting of the County Council in 2011.

**2. New Code of Conduct for Members** - The new Code of Conduct for Members, which is contained within The Local Authorities (Model Code of Conduct) Order 2007, is attached as Appendix 1 to this report. It comes into force on 3 May 2007. Once in force, the 2007 Order will revoke and replace the 2001 Orders (containing the current model Codes), although they will continue to have effect in relation to investigations, adjudications and appeals for allegations of misconduct which take place before the new Code is adopted by the Authority. Authorities have six months from the day the 2007 Order is made to adopt their own Code based on the model, but the Standards Board's expectation is that authorities will adopt new Codes at their annual meetings. An explanatory memorandum to the 2007 Order has also been issued and a copy is attached at Appendix 2.

One of the specific functions of the Standards Committee, under section 54 of the Local Government Act 2000, is to advise the Authority on the adoption or revision of a Code of Conduct. Although the Act gives authorities the option of adopting a new Code in place of the existing one, or revising the existing Code, given the extensive nature of the changes made by the new model, a new Code for the Authority has been drafted. A copy of the draft is attached at Appendix 3. With certain exceptions (not relevant to this Authority), all the provisions of the new statutory model Code are mandatory and have therefore been included in the draft new Code for the Authority. Paragraph 3(3) of the new Code, although seemingly only relevant to police authorities and the Metropolitan Police Authority, is a mandatory provision, not excluded for any Authority and has therefore had to be included.

Authorities are able to include other provisions in their Codes, not included in the model, provided they are consistent with it. The Standards Committee will therefore consider whether the Authority's own Code should differ, in any material respect, from the model Code, bearing in mind recent advice from the Standards Board, which states:

*To facilitate implementation, ensure consistency across authorities and assist*

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*members to understand the revised Code, we strongly recommend councils adopt the revised Code at their first opportunity and without amendment. This will give certainty to members and the public as to what standards are expected, ensure consistency throughout England, and minimise the legal risk of your authority adopting additional provisions which are unenforceable.*

The key issues and changes made by the new model Code are:

- combining the four model Codes of Conduct into one consolidated Code;
- making the language gender neutral;
- incorporating reference to the General Principles of Conduct, namely that the Code should be read “together with” them (they are not part of the Code). The Standards Board has advised that:

*..... we ..... recommend that you consider adopting the ten General Principles as a non-enforceable preamble or annex to your Code to remind members and the public of the principles underlying the Code.*

The Standards will therefore consider whether the Authority’s own Code should attach the General Principles (attached at the end of Appendix 3), as suggested by the Standards Board. This would enable Members to readily relate the Principles to the Code’s provisions. The Principles have currently been included as an Annex to the draft new Code;

- deleting the reference to unlawful discrimination in the Authority’s current Code and replacing it with a requirement not to do anything that would cause the Authority to breach its statutory duties in relation to equality legislation of the new Code. This follows an Adjudication Panel finding in January 2005 which concluded that the Panel had no jurisdiction to make findings of unlawful discrimination.
- adding a specific provision against bullying behaviour. The Standards Board will issue guidance on the definition of bullying.
- allowing Members to disclose confidential information where such disclosure is in the public interest, is in good faith, is reasonable and complies with any reasonable requirements of the Authority.
- Generally the new Code applies when a Member is acting in his/her official capacity, however there are certain parts (listed below) which apply to private conduct which constitutes a criminal offence and for which the Member has been convicted:

intimidation of anyone involved in an investigation (or attempts to do so) – new provisions which will become important as more cases are to be investigated at local level;

conduct bringing the Authority into disrepute; and

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using or attempting to use [new provision] position improperly to confer and advantage/disadvantage.

Conduct to which the Code applies includes a criminal offence committed before the Member took office, with conviction after that date.

- adding a reference to the need for Members to have regard to the Code of Recommended Practice on Local Authority Publicity;
- deleting the whistleblowing provision to report breaches of the Code by other Members;
- making gifts and hospitality over £25 a personal interest which should be included in the Register of Members' Interests. Such interests will also generally need to be declared at meetings, if the subject matter is related, but not if the interest was registered more than three years before the date of the meeting;
- in the context of personal interests, removing the term "friend" and replacing with "relevant person", which will cover "a member of your family" and persons with whom Members have a "close association";
- further amending the definition of personal interests by narrowing the geographical area against which the Member must judge his/her interest. The reference to the *authority's area* is replaced with a reference to the *electoral division/ward* affected by the particular matter. The aim is to allow Members to be better able to participate in meetings in line with their communities' expectations;
- clarifying that the rules on disclosure of interests at meetings only apply if the Member is aware or ought reasonably to be aware of the interest. This removes the anomaly whereby a Member may be in breach of the Code due to an interest held by a relative of which s/he was unaware;
- the consultation document proposed a new category of interest, namely "public service interest" (arising if a Member is also a Member of another public body) however this has been deleted under the new Model and now seems to be dealt with by paragraph 9(2) of the new Code. The effect is the same, however, as under the new Code, interests relating to membership of other public bodies will only need to be declared at such time as the Member speaks on a relevant issue. This will avoid the need for every member, who does not wish to speak, to declare interests at the beginning of the meeting or the debate;
- the definition of a prejudicial interest is substantially the same (paragraph 10(1)), although the regime in relation to participation in respect of prejudicial interests has been amended to make it clearer, and to allow participation in a broader set of circumstances:
- In relation to the circumstances where currently Members may regard themselves as not having a prejudicial interest, the new Code makes it clear that a Member will not have a prejudicial interest in the specified circumstances. It also simplifies and amends the list of exemptions where Members do not have a

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prejudicial interest, including allowing Members to participate in business relating to the adoption of indemnities which may relate to themselves;

- there is also no prejudicial interest where the business in question does not affect the financial position of, or relate to the determining of any approval, consent, licence, permission or registration in relation to, the Member concerned or a person or body described in paragraph 8 of the Code;
- Members will only be debarred from involvement in the overview and scrutiny function where they would be scrutinising decisions they were involved in making. This would enable Members who were not on, or present at, the relevant decision-making committee when the decision was made to be involved in its scrutiny;
- amending the rules regarding participation in relation to prejudicial interests: a Member with a prejudicial interest may attend a meeting (including an overview and scrutiny meeting) to make representations, answer questions or give evidence relating to the business in question, provided that the public is also allowed to attend. The Member must, however, withdraw from the room immediately after making representations, answering questions or giving evidence;
- allowing sensitive information in respect of personal interests not to be included on the Register of Members' Interests (with the Monitoring Officer's agreement) or declared at meetings (although the existence of the personal interest must still be declared). This will apply where revealing the information would create a serious risk of the Member or those s/he lives with being subject to violence or intimidation.

The Standards Board will be publishing a general guide to the new Code on its website, hopefully from 3 May 2007, with hard copies being published and distributed shortly afterwards. The Board also has plans to produce a further range of training materials for authorities to use to train their Members on the revised Code, including a DVD, which is scheduled to be distributed in July 2007.

The new statutory Code applies to "members" of authorities, which includes "co-opted members", as before, and "appointed members", which is a new provision. The 2007 Order does not define "co-opted member", but the Standards Board has confirmed that the current definition still applies, meaning that co-opted members with voting rights will continue to be automatically bound by the new Code. "Appointed member" is also undefined. The Standards Board has confirmed:

*... it is not intended that those covered be extended by the new code beyond the previous position.....[ie it is not that non-voting co-optees should be automatically bound by the Code]*

*The reference to "appointed" is .... a clarification in relation to joint committees, joint sub-committees and area committees. In other words, whilst a member may be a member of one authority, it clarifies (or at least it attempts to) that the member is bound, not just in relation to meetings of their authority, but also in relation to joint committees they have been "appointed" to sit on.*

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In addition to elected Members, the new Code for the Authority will therefore apply directly to:-

- (a) voting co-opted Members, because the Code says so; and
- (b) non-voting co-opted Members who are members of another relevant authority, in relation to their work on this Council's Committees, because their *own* authority's Code says so.

The Standards Committee will, however, consider the position of non-voting co-opted Members who are not members of another relevant authority. They are not bound by the Authority's Code, although the Council does, currently, make such appointments conditional on the Member concerned agreeing to be bound. This is because, given that all elected Members and co-opted Members, whether voting or otherwise, are acting in public office and the administration of Council business, the Standards Committee previously considered it was anomalous that some non-voting co-opted Members should be subject to the Code whilst others were not. The County Council therefore resolved, on 15 May 2002, on the recommendation of the Standards Committee:

- (a) *That all existing Non-Voting Co-opted Members who are not Members of another Local Authority currently serving on the Education Services Overview and Scrutiny Committee, the Social Services Overview and Scrutiny Committee and Area Committees be asked voluntarily to observe the County Council's Code of Conduct, including the declaration of interests and registration of interests in the public register.*
- (b) *That future appointments of Non-Voting Co-opted Members to those Committees be subject to the person appointed agreeing to observe the County Council's Code of Conduct including the declaration of interests and registration of interests in the public register.*

The Standards Committee will now consider afresh whether such appointments should still be conditional on the Member concerned agreeing to be bound by the Code.

Under the law and the County Council's Constitution, as it currently stands, any allegation that a non-voting co-opted Member of a Committee, who is not a Member of another authority, has breached the Code of Conduct would not be subject to investigation under the Local Government Act 2000 and the Standards Board, but would be subject to consideration by the Standards Committee. Regarding co-opted Member substitutes, County Council resolved on 23 October 2002 that:

*Each named substitute co-opted Member shall, as soon as possible after nomination and in any event not later than the date of the first Committee meeting he/she proposes to attend in place of a co-opted Member, agree to comply with all aspects of the County Council's Code of Conduct for Members, including registering their interests in the Register of Members' interests.*

The Standards Committee will consider whether to recommend to Council that substitute co-opted Members, voting or otherwise, be subject to the same timescales for the registration of their interests as other co-optees, namely:

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*That all appointments/re-appointments of named substitute co-opted Members be subject to the person appointed agreeing to observe the County Council's Code of Conduct for Members for the time being in force, including the declaration of interests and registration of interests in the public Register of Members' Interests.*

All elected Members and co-opted Members must, before they can act in the office to which they have been elected or appointed, give a written undertaking that in performing their functions they will observe the Code. For elected Members of the Authority, this undertaking is given in their declaration of acceptance of office forms. The Standards Board has confirmed that Members will *not* have to sign another such form when the revised Code is adopted by the Authority. This is because the relevant statutory provisions refer to Members being bound by whichever Code is currently applicable within the Authority. This is also true for existing voting co-opted Members. New such Members will, however, need to comply with the requirements.

Members have 28 days from the date on which their Authority adopts their new Code of Conduct to register their personal interests, as required by the Code, by providing written notification to the Head of Legal Services, as Monitoring Officer. The new model Code does not contain any transitional provisions carrying forward existing registrations of Members' interests. Consequently, every Member and co-opted Member will need to submit a new registration of interests form within the time limit.

At the same time as adopting the Code of Conduct for Members in 2002, the County Council also approved a supporting Protocol for Members' Guidance (attached at Appendix 4) to assist Members in overcoming several perceived ambiguities and anomalies within the current Model Code. The Standards Committee will be reviewing the Protocol to see whether any changes are needed.

A further report, setting out the views and **recommendations of the Standards Committee** will be circulated following its meeting, including:-

- whether the Authority's own new Code should differ, in any material respect, from the new model Code.
- whether the General Principles should be attached to the Authority's own Code, as suggested by the Standards Board.
- whether the draft new Code of Conduct for Members should be recommended to Council for approval in place of the existing Code;
- whether all appointments/re-appointments of non-voting co-opted Members (who are not members of another relevant authority) to County Council Committees should continue to be subject to the person appointed agreeing to observe the Council's Code of Conduct for Members for the time being in force, including the declaration of interests and registration of interests in the public Register of Members' Interests;
- whether the current provisions regarding substitute co-opted Members should be amended; and

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- whether the Guidance Protocol should be amended.

County Hall,  
NORTHALLERTON.

**8 May, 2007**

**JAMES DAGLISH**  
Chairman