

NORTH YORKSHIRE COUNTY COUNCIL

STANDARDS COMMITTEE

18 May 2009

Standards Bulletin

1.0 PURPOSE OF REPORT

1.1 To present to the Committee, for consideration, a draft Standards Bulletin.

2.0 BACKGROUND

2.1 The Standards Bulletin is produced periodically and circulated to Members of the Authority to keep them informed of key developments and decided cases in the standards regime.

3.0 THE STANDARDS BULLETIN

3.1 The latest draft of the Bulletin is attached to this report at Appendix 1. The Committee is requested to consider the Bulletin with a view to its subsequent circulation.

4.0 RECOMMENDATIONS

4.1 That subject to any comments Members may have, the Bulletin be circulated to Members of the Authority.

CAROLE DUNN

Assistant Chief Executive (Legal and Democratic Services) and Monitoring Officer

County Hall
NORTHALLERTON

Background Documents:

None

5 May 2009



STANDARDS BULLETIN

INTRODUCTION

This edition of the Standards Bulletin reaches you at an important time in the further development of the ethical framework.

The national Code of Conduct for Members was first introduced in 2002 and amended in 2007. The Council has been proactive in implementing the prescribed ethical framework since that time, including the introduction of the local standards regime last year.

However, with the challenges of revised Codes of Conduct for Members and Officers on the horizon, and the last few remaining parts of the local regime to be put into place, there is still more important work to be done by the Standards Committee over the coming months.

Should you wish to discuss any standards matter, please do not hesitate to contact the Monitoring Officer or any of her Team.

THE STANDARDS COMMITTEE

The Members of the Standards Committee:

- **Mr Henry Cronin***
- **Mr James Daghlish (Chairman) ***
- **Miss Gillian Fleming ***
- **Dr Janet Holt ***
- **County Councillor David Jeffels**
- **County Councillor Brian Marshall**
- **County Councillor John Marshall**
- **County Councillor Caroline Seymour**
- **County Councillor Jim Snowball**
- **County Councillor Peter Sowray**

* Independent non-elected Member

If in doubt, please seek advice from the following:

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JAMES DAGLISH

Chairman of the Standards Committee

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FOREWORD

by the Leader and Chief Executive Officer

Standards of behaviour within the Council are regulated by national Codes of Conduct and the ethical framework introduced in 2002. The Council is proactive in promoting and maintaining high standards of conduct through its Standards Committee, which has a wide remit and full work programme.

Whilst standards of behaviour within the Council are excellent, there is no room for complacency. We fully subscribe to the principles underpinning the ethical framework and expect all Members and Officers to do the same. We are both committed to working together to lead by example and upholding the ethical wellbeing and effective governance of the Council.

JOHN WEIGHELL

Leader of the Council

JOHN MARSDEN

Chief Executive Officer

COMPLAINT ASSESSMENT PROCEDURE

The Standards Committee (England) Regulations 2008 provide for the local receipt, assessment, investigation and determination of complaints that Members may have breached the Code of Conduct, by local standards committees.

There is a statutory duty on the Authority to publish, in such manner as it considers appropriate, details of the procedures it will follow in relation to such complaints.

A procedure for the initial assessment of complaints and the review of any decision to take no action on a complaint has been agreed by the Standards Committee. The procedure incorporates the local Assessment Criteria previously agreed by the Committee.

The procedure has been published on the Authority's website and can be accessed under the 'Useful Downloads' section on the Councillor Conduct webpage ([Homepage/Council and democracy/Councillors](#) /Councillor conduct).

Procedures regarding the investigation and determination of complaints are dealt with in the Committee's Protocol for Local Determination of Complaints, which is currently being reviewed by the Monitoring Officer.

LOCAL ETHICAL FRAMEWORK DEVELOPMENTS

New Codes of Conduct for Members and Officers

At its meeting on 1 December 2008 the Standards Committee considered a consultation paper in relation to further proposed amendments to the Members' Code of Conduct. The proposals relate

primarily to the issue of the applicability of the Code to Member conduct whilst not acting in their official capacity.

The second part of the consultation paper dealt with a proposed new national Officers' Code of Conduct.

The proposals were considered by the Committee, which agreed that the Monitoring Officer should prepare a response, in consultation with the Chairman of the Committee, for approval for submission by the Executive Member for Corporate Affairs.

A response was submitted accordingly. Copies are available from the Monitoring Officer.

No further information has been received in relation to the proposals to date.

Members will be kept informed of developments.

The Standards Committee (Further Provisions) Regulations 2009

The Standards Board has announced that draft Regulations are being prepared which will:

- allow the Board to **suspend** a relevant authority's local **assessment functions** (eg where an authority has failed to have regard to the Board's guidance/directions, or to carry out its standards functions properly, or where the standards committee requests the Board's intervention);
- enable authorities to establish **joint standards committees** to deal with all or any functions of a standards committee. The Standards Board will be producing guidance on joint standards committees which will include a draft constitution covering the information required by the regulations;

- amend the powers of standards committees to grant **dispensations** to Members with a prejudicial interest.

Currently, under the existing dispensations regulations, a standards committee may only grant a dispensation where the transaction of business would otherwise be impeded because:

- a) more than 50% of the Members entitled or required to participate would not be able to; or
- b) the County Council would not be able to comply with "any duty which applies to it under section 15(4) of the Local Government and Housing Act 1989"

It has long been acknowledged that there is a problem with the drafting of paragraph (b), the political balance criterion, as the s15(4) duty requires the allocation of seats and the appointment of committees that reflect the overall political balance of an authority. However, the duty does not arise in relation to individual meetings, either of the authority or its committees.

The practical effect of paragraph (b) as currently drafted is, therefore, that a dispensation can be sought if the Authority would be unable to allocate seats in accordance with the rules relating to political balance however this would only occur at the time that allocations were made to political groups and, thereafter, committees and not simply that political balance would not be maintained thereafter.

For this reason, it is difficult to envisage circumstances in which the paragraph (b) criterion would be met.

It is therefore anticipated that the new Regulations will clarify that Members can seek a dispensation where the political balance of the meeting would

be upset sufficiently to prejudice the outcome of voting on the issue.

The paragraph (a) ground for granting a dispensation where more than 50% of the Members are affected will remain.

The Board expects the new Regulations to come into force in May 2009. Members will be kept informed.

SBE Guidance on 'Other Action' by Monitoring Officers

One of the options open to a Standards Committee in assessing a complaint that a Member may have breached the Code of Conduct, is to refer the complaint to the Monitoring Officer for 'other action'.

This means action other than investigation, eg training, conciliation or anything else that appears appropriate (eg instituting changes to Authority procedures if they have given rise to the complaint).

The purpose of 'other action' is not to find out whether the Member breached the Code; the decision is made as an alternative to investigation.

In response to a number of queries, the Standards Board is producing further guidance on 'other action' in order to clarify what it is, what it can involve, when it is appropriate, and what to do if it isn't successful.

The guidance also addresses the role of the monitoring officer, adjournment of assessment sub-committee meetings, and explains why 'other action' closes the opportunity to investigate.

The Board intends to publish this guidance on its website (www.standardsboard.gov.uk) in May 2009.

Application of Code to private conduct

The effect of the decision of Collins J. in the case of Ken Livingstone v Adjudication Panel for England [2006] was that Section 52 of the Local Government Act 2000 required Members to comply with the Members' Code of Conduct in their **official capacity** only, and that it did not extend to their private conduct.

Section 183(4) of the Local Government and Public Involvement in Health Act 2007 removes the words "in performing his functions" from Section 52(1)(a) of the 2000 Act, to enable the Code to cover some conduct in a **private** capacity.

Section 183(4) is only in force in Wales, not yet in England; so in England, the Code still does not yet cover Members at any time in their private capacity.

It is the Government's intention that these amendments will become effective at the same time as the new Code becomes operative.

Members will be kept informed of developments.

STANDARDS BOARD MONITORING

Nationally

As the national regulator responsible for monitoring and promoting ethical standards, the Standards Board monitors local standards regime arrangements via an online information return system.

Quarterly Returns

The Standards Board collects information on case activity and the profile of standards committees via online returns made by authorities on a quarterly basis.

The Board has recently published certain information from returns made to date nationally:

- a typical standards committee in an authority without parishes has **nine** Members, including **four** independent Members;
- a typical standards committee in an authority with parishes has 11 Members, including four independent Members and three parish representatives;
- on average, district and metropolitan councils have the largest standards committees and police authorities have the smallest;
- **2,030** cases have been recorded for the period 8 May to 31 December 2008;
- **69%** of authorities have dealt with at least one case during the first three quarters. Of all the authorities with cases, the average recorded is **two** per quarter, a total of **six**;
- Of the complaints recorded, **56%** are from members of the public and **34%** are from council Members. The remaining **10%** are from a combination of officers, parish or town clerks, MPs, monitoring officers, and those completing the form as 'other';
- No further action is taken in **52%** of the cases recorded; of the rest:
 - 14% are referred to another authority;
 - 28% are referred to the Monitoring Officer for investigation;
 - 6% are referred to the Standards Board for investigation;

➤ <1% are referred to the Monitoring Officer for other action.

- A total of **344** requests for a review of 'no further action' decisions were made. Of the **264** of these that are completed, **95%** of decisions remain at 'no further action'. The other **6%** are either referred to the Monitoring Officer for investigation or referred to the Standards Board.

Annual Returns

Members may recall that the Standards Board intended to collect wider information (going beyond case handling details) from local standards committees on their activities and on their arrangements for supporting ethical conduct.

Those arrangements are now in place (from April 2009): this wider information is submitted in an annual return to the Board, and the County Council took part in the Board's pilot exercise.

The Board has refined the Annual Return questions following the feedback from the pilot exercise. Topics for the Return are:

- activities of standards committees
- the role of leaders in promoting high standards
- training
- communicating the complaints process and outcomes
- Member-officer relations
- communicating the Register of Members' Interests
- officer conduct

The annual return takes the form of an online questionnaire, similar to the quarterly return.

The information the Board collects from annual returns will be used to "improve performance, champion the work of standards committees, and to ensure that [the Board has] an effective overview of local standards frameworks."

Local standards complaints

There have been three complaints (the same complaint in respect of three Members by the same complainant) against North Yorkshire County Councillors during the reporting quarter January to March 2009.

The complaints have been considered together at the same meetings of the Complaint Assessment Sub-Committee and, subsequently, at the request of the complainant, the Complaint Review Sub-Committee.

Certain aspects of the complaints were re-directed to be dealt with via the Council's Corporate Complaints process as they did not fall within the remit of the Standards Committee.

No action is to be taken in respect of any aspect of the complaints.

CONTRIBUTION OF STANDARDS COMMITTEES

Previous Standards Board research has shown that there is a demand from standards committees for additional guidance on how to undertake some of their responsibilities.

The Standards Board has commissioned new research by the Universities of Hull and Teesside into the responsibilities and contributions of standards committees. They will collect effective practice examples from standards committees in nine local authorities on activities they undertake to ensure high ethical standards.

The Board hopes to share its findings in July 2009.

APE MERGER TO TAKE PLACE

On 1 April 2009, the responsibility for the administration of the Adjudication Panel for England transferred to the Tribunal Service, an executive agency of the Ministry of Justice.

The transfer is part of the Government's ongoing programme of tribunal reform which began in April 2006.

Adjudication Panel staff have transferred from being Standards Board employees to becoming part of the Civil Service.

The Adjudication Panel office will relocate to the Tribunals Service office in Leeds on 18 May 2009. The new address will be:

Adjudication Panel for England
York House
York Place
Leeds
West Yorkshire
LS12ED

TRAINING

In accordance with the Standards Committee's Standards Training Plan, refresher standards training for Members and Officers of the Authority will be planned for after the County Council elections in June 2009, and once the outcome of the recent consultation paper on new Codes of Conduct for both Members and Officers is known. Refresher training will be organised around any new Codes of Conduct published.

REGISTER OF MEMBERS' INTERESTS

Don't forget:

- to keep your interests form under review and register any required amendments within 28 days by

providing written notification to the Monitoring Officer;

- to register gifts and hospitality worth £25 or more and received in your capacity as a Member of the Authority.

Remember too:

- if you amend your County Council registration of interests form, consider whether you need to make the same or a similar amendment to your interests form on any other relevant authority on which you serve (eg the Fire Authority, or one of the National Park Authorities).

Should you wish to inspect the Council's Register of Members' Interests, or amend your registration entry, please contact Ann Rose (extension 2237) in Room 18, County Hall, Northallerton.

Alternatively, registration of interests forms are available for inspection on the Council's website via the [Homepage/Council and democracy/](#) Councillors link or by following the following link:

<http://www.northyorks.gov.uk/index.aspx?articleid=8066>

Should you have any queries in relation to the registration of your interests or of any gifts or hospitality received/offered, then please feel free to contact the Monitoring Officer or any of her team.

ANNUAL ASSEMBLY 2009

The Eighth Annual Assembly of Standards Committees will take place on 12 and 13 October 2009 at the ICC in Birmingham.

The Standards Committee will be represented at the Assembly and key information will be disseminated to Members.

ADJUDICATION PANEL CASES

North Wiltshire District Council

The complainant, the Town Council Clerk, had alleged that the subject Member, a Town and District Councillor, had failed to treat her with respect and had bullied her.

The subject Member had served on the Standards Committee for four years.

The allegations related to:

- a telephone conversation between the subject Member and the complainant regarding the union flag being taken down from the Town Hall, during which it was alleged that the Councillor had commented that "*you are going to be in for a very rough ride, this is war*" and that "*your attitude stinks*".
- various emails sent by the subject Member to the Town Clerk relating to the flying of the union flag, which the Member strongly felt should be flown from the Town Hall on a daily basis. They contained such comments as:

... she will find herself with a virtual war on her hands ...

You forgot yourself Town Clerk you DID say exactly what I quoted and I stand by that...

and the councillor suggested that she might want to take legal advice as "*I am afraid that we will not let the matter rest.*"

The Standards Committee found this to be bullying behaviour.

- during a public Town Council meeting, the subject Member querying a petty cash claim for £20 by the complainant for a working lunch, on Town Council business, for

four people including external consultants. It was alleged that the subject Member stated that as the complainant was on an extremely high salary, much more than councillors, then she should pay for working lunches out of her own pocket.

The Standards Committee found this to be a failure to treat the Clerk with respect.

- That overall, given these incidents, the Councillor had bullied the complainant.

The Standards Committee had found that the subject Member had therefore breached the Code and suspended him for one month unless he gave a written apology to the complainant prior to the commencement of the suspension.

The subject Member appealed to the Adjudication Panel. He resigned from the Town Council.

In relation to the bullying allegation, the Appeals Tribunal accepted that there was genuine confusion on the Councillor's part as to the legal effect of the resolution at the parish meeting re the flying of the flag. The Tribunal could understand why the Councillor might have been aggrieved that the flag had been taken down on the order of the Town Clerk.

On the basis of the findings of fact above, the Appeals Tribunal found itself unable to hold that the terms of the telephone conversation were anything other than a **direct and robust challenge** of an officer's decision by a councillor. Whilst the forceful nature of that call would have been difficult for the complainant, the Tribunal did not consider that this amounted to disrespect or bullying.

Regarding the emails, the subject Member said he had intended to reflect the depth of feeling about the issue and warn the complainant that things could get out of

control, not that the words should be taken literally.

The Appeals Tribunal accepted this account, having regard to the terms of the subsequent emails which predominantly concerned a legal issue and possible next steps (legal action, a survey and the taking of a parish poll) by the group campaigning in favour of flying the flags, which would have been action taken against the Town Council, not the complainant personally.

The Tribunal was therefore of the view that the telephone conversation and the subsequent emails were forceful, challenging and would have been uncomfortable for the Town Clerk to deal with. However, she was the most senior officer at the Town Council and could be expected to handle robust and direct challenges by councillors. The tone used by the Councillor was unfortunate, but did not amount to either disrespect or bullying.

The Tribunal felt it was unconscionable that the Councillor should have suggested that the Town Clerk pay for council expenses from her own pocket. It was moreover deeply disrespectful to have referred to her salary level, in a public meeting, in the way that he did. These were matters which ought to have been raised in a measured way, outside of the meeting and certainly not in a public forum. This was therefore a **failure to treat the complainant with respect**.

Regarding the Standards Committee's overall finding that the Councillor had bullied the Town Clerk, the Appeals Tribunal had concluded that the matters relating to the flying of the flag had not amounted to a breach of the Code.

As such, in considering whether there had been bullying, it was only looking at the expenses allegation. The Tribunal took into account the Standards Board guidance on bullying and its suggestion that a one off incident could give rise to bullying.

The Appeals Tribunal considered that, whilst this could arise, there would more normally be a pattern of conduct giving rise to a finding of bullying. **For a one-off incident to amount to bullying, as opposed to disrespect, it would need to be of a serious nature and characterised by an abuse of power**, something over and above just the fact that the matter involved an officer and councillor. An example of this might be a threat of dismissal by a senior councillor or one with direct involvement in the officer's area of responsibility.

Whilst the Appeals Tribunal was very critical of the Councillor for the way he had behaved regarding the expenses claim, **it did not consider that this was bullying**.

The Tribunal did, however, consider that the breach arising from the expenses incident was sufficiently serious to warrant the sanction imposed. The Councillor could have mitigated the length of suspension by providing an apology, but had failed to do so. Without the period of suspension, there would be no effective sanction for failing to provide the apology.

Contributors:

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North Yorkshire Legal & Democratic Services

Resources

www.standardsboard.gov.uk
SBE Bulletins
www.adjudicationpanel.co.uk

