

NORTH YORKSHIRE COUNTY COUNCIL

STANDARDS COMMITTEE

10 May 2010

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 and senior officers of the Authority to keep them informed of key developments and decided cases in the standards regime.

3.0 THE STANDARDS BULLETIN

3.1 A draft 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 updated as necessary following the outcome of the Committee's meeting and then circulated to Authority Members and senior officers.

CAROLE DUNN

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

County Hall
NORTHALLERTON

Background Documents:

Standards for England Bulletin – February 2010

Standards for England website (www.standardsforengland.gov.uk)

28 April 2010



STANDARDS BULLETIN

INTRODUCTION

This is the last opportunity I shall have of contributing to the Standards Bulletin, as rightly I am standing down after nine years on the Standards Committee.

In this Bulletin you will find details of the new independent members whom I am sure will bring fresh ideas, enthusiasm and experience to the work of the Committee.

Also you will find some advice on use of the Internet and social networking. These are powerful tools, but it is worth remembering that they are a permanent record and potentially always in the public domain!

My thanks go to all members of the Committee, past and present, for their support, but especially I would like to acknowledge the unfailing help from Carole Dunn and Moira Beighton of Legal Services in guiding me and the Committee in undertaking our role. They are always available to discuss any matter relating to standards.

Finally it is through the commitment of members and officers that I believe we have established at North Yorkshire a strong ethical framework, which supports good delivery of services. Long may this continue!

JAMES DAGLISH

Chairman of the Standards Committee

THE STANDARDS COMMITTEE

The Members of the Standards Committee:

- **County Councillor Philip Barrett**
- **Mr Henry Cronin***
- **Mr James Darglish (Chairman)***
- **Mrs Hilary Gilbertson MBE***
- **Dr Janet Holt***
- **County Councillor David Jeffels**
- **County Councillor John Marshall**
- **County Councillor Peter Popple**
- **County Councillor Peter Sowray**
- **County Councillor Geoffrey Webber**

* Independent non-elected Member

If in doubt, please seek advice from the following:

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STANDARDS COMMITTEE CHANGES

James Daglish



The term of office of the current Chairman of the Standards Committee, James Daglish, ends on the date of the annual County Council meeting in May 2010.

Standards for England guidance recommends that independent members serve no more than two terms of four years each.

James has been an independent Member of, and chaired, the Standards Committee since its inception in 2001. His vision for, and dedication to, the Committee has ensured that it has always had a pro-active forward Work Programme, to help maintain the high standards of conduct within the Authority.

James' clear, calm and effective chairmanship will be missed. The Standards Committee thanks James for his invaluable contribution to the Committee and its work over the years and wishes him and his family well for the future.

A combined recruitment process was undertaken for appointments to the independent Member positions held by James and a former independent Member, Gillian Fleming, whose resignation was reported in the last Bulletin.

Full Council, at its February meeting and on the recommendations of the Standards Committee, appointed Ms Hilary Bainbridge and Mrs Hilary Gilbertson MBE to these positions.



Hilary Bainbridge

Hilary's term of office will commence on 19 May 2010 and run until the annual Council meeting in 2014.

Hilary is the current Waterways Ombudsman and also assists other Ombudsmen in their work. She has a degree in mathematics and trained as a social worker.

Hilary previously worked for social services, the voluntary sector and the Audit Commission, where she became Regional Projects Officer for north-east England, overseeing reviews of economy, efficiency and effectiveness of local government and the NHS. Following this, Hilary spent eight years as Director of Investigations for the Parliamentary and Health Service Ombudsman's office, subsequently becoming Deputy Local Government Ombudsman in York.

Hilary Gilbertson MBE



Hilary's term of office commenced on 1 March 2010 and will run until the annual Council meeting in 2014.

Hilary is a Yorkshire farmer but has also spent much of her time in public service.

She is a Magistrate on the Selby Bench and is also currently Chairman of the North and West Yorkshire Courts Board, which advises, scrutinises reviews and make recommendations to encourage improvements in performance to ensure the needs of court users and the local community are met in terms of an effective

and efficient administration of the Crown, county and magistrates' courts.

Hilary has had a long involvement with Prison Independent Monitoring Boards, having spent twenty years on the Board at HMP Full Sutton. She is now a member of Askham Grange Board.

She is also a longstanding independent Member of the North York Moors National Park Authority's Standards Committee and an external member of York University's Psychology Department Ethics Committee.

DELAY IN NEW MEMBERS' CODE OF CONDUCT

The proposed new Code of Conduct for Members will *not* be laid during this Parliamentary session.

Communities and Local Government have notified Standards for England that the Government is concentrating on financial instruments and so there will not be Parliamentary time available for the new Code.

In practice this means that a new Code will not now be laid until after the general election.

Members will be kept informed of developments.

STANDARDS COMMITTEE ANNUAL REPORT 2009/10

Each year, the Standards Committee presents an Annual Report about its work to full Council, to apprise the Council of the work of the Committee and help raise the profile and awareness of the Committee and ethical standards generally.

The Annual Report for 2009/10 has been approved by the Committee and will be

presented to the next meeting of the Council for Members' information.

The Annual Report will be published on the Standards Committee's webpage on the Council's website:

<http://www.northyorks.gov.uk/index.aspx?articleid=11139>

ANNUAL RETURN TO SFE

Each year, Standards for England collects wider ethics information (going beyond case handling details) from local standards committees on their activities and on their arrangements for supporting ethical conduct. The information is submitted in an online Annual Return to the Sfe by the Monitoring Officer.

Topics for the Return this year were:

- communication, including the Committee's Annual Report, the promotion of the standards regime and the complaints process and outcomes;
- activities of the Standards Committee;
- the ways in which the public can access information about the Standards Committee and its work;
- influence, including the role of leaders in promoting high standards;
- standards in partnership working;
- training and support; and
- investigations.

A copy of the information provided in the completed Annual Return for the Authority for 2009/2010 is available from the Monitoring Officer.

THE FIRST-TIER TRIBUNAL (LOCAL GOVERNMENT STANDARDS IN ENGLAND)

In the last Bulletin, Members were informed that the work of the Adjudication Panel for England would be transferred to the First-tier Tribunal (Local Government Standards in England) in January 2010. This has now taken place and the Adjudication Panel has been abolished.

The First-tier Tribunal hears cases referred to it by an Ethical Standards Officer or a Standards Committee following an investigation.

The Tribunal also hears appeals by a subject Member against the decision of a Standards Committee.

The First-tier Tribunal now has additional powers and procedures. It has the power to summon witnesses or require witnesses to produce documents relating to its hearings.

All Tribunal hearings can now be conducted either orally or by written representations with the consent of all parties.

Appeals from the First-tier Tribunal will now be heard by the Administrative Appeals Chamber of the Upper Tribunal, a statutory appellate tribunal.

Any party may appeal to the Administrative Appeals Chamber if they can show that the First-tier Tribunal made an error of law.

Additionally, the subject Member has the right to appeal findings of fact, if their appeal is against:

- (a) a decision that they failed to comply with a code of conduct;
- (b) a decision imposing suspension or another sanction.

A further change to the appeals process is that if a subject Member is successful at the First-tier Tribunal, it is still possible for an

Ethical Standards Officer or standards committee to appeal on a point of law to the Upper Tribunal.

The First-tier Tribunal now has the power to make an order for costs if the Tribunal considers that a party has acted unreasonably in bringing, defending or conducting the proceedings. It may make an order for costs following an application or on its own initiative.

This means that the Tribunal can award costs against a standards committee, Ethical Standards Officer or subject Member if they have acted unreasonably in the conduct of their investigations or hearings.

The First-tier Tribunal may also make an award for wasted costs incurred by any legal or other representative where the Tribunal considers that they have acted negligently, improperly or unreasonably in bringing, defending or conducting proceedings.

For more information and detailed guidance please see:

<http://www.adjudicationpanel.tribunals.gov.uk/>

STAKEHOLDER TRACKER 2009 – ‘A QUALITATIVE ASSESSMENT OF ADVICE AND GUIDANCE’

In its latest Bulletin newsletter, Standards for England explained that every two years it conducts a ‘stakeholder tracker’ form of research in two parts: a quantitative survey and a qualitative investigation, which assesses the levels of satisfaction of members and officers in local government with the performance of Standards for England.

The survey was completed last year and the qualitative section of the research is

now available on the SFE's website (www.standardsforengland.gov.uk).

SFE reports that some of the key findings are:

- monitoring officers and standards committee members are very positive about the local standards framework and welcome the chance to take ownership of the process of investigating complaints.
- SFE's monitoring officer helpline received positive feedback and the service is felt to have improved over the past 12 months.
- Monitoring officers welcome the development of peer and local/regional networks although some authorities may already have some form of networking in place.
- There are further topics on which SFE could provide guidance eg more information on other standards committee practices, sanctions and proportionality, mediation and more advice on the overlap with Freedom of Information and Data Protection legislation.

SFE CORPORATE PUBLICATIONS

Standards for England produces a range of publications which contain general and statistical information about its current work and that of the standards community, its financial accountability and performance and its mission and objectives.

The SFE has recently published the following documents:

- Introduction to SFE
- Regulatory Statement
- Standards Update Spring 2010

- Review of the local standards framework - Local Standards 2.0 – the proportionality upgrade
- Annual Review 2008/9
- Corporate Plan 2009/12
- Annual Report and Accounts 2008/9

Copies of the publications can be downloaded from the SFE's website at:

<http://www.standardsforengland.gov.uk/Aboutus/Corporateinformation/Corporatepublications/>

THE COMMITTEE ON STANDARDS IN PUBLIC LIFE ANNUAL REPORT 2008-09

The Committee on Standards in Public Life has published its Annual Report for 2008/9, which gives an overview of its work re ethical standards, which the Committee states has been dominated by its inquiry on MPs' expenses.

The Report covers the following areas:

- The Committee's Eleventh Report: Review of the Electoral Commission
- Party funding
- Third biennial survey of public attitudes towards conduct in public life
- Committee inquiry into local leadership
- Standards frameworks for local government in England and Wales
- Freedom of information
- Whistleblowing
- Standards of conduct in the House of Lords
- MPs' expenses and allowances

and contains other general information about the Committee and financial information.

Copies of the Annual Report are available from the Monitoring Officer.

SFE GUIDANCE RE **'BLOGGING'**

Members will recall from the last Bulletin that Standards for England has published, on its website, various Online Guides for example in relation to:

- Gifts and Hospitality
- Disclosing Confidential Information
- Bullying and the Code of Conduct
- Lobbying
- Personal and Prejudicial Interests
- Freemasons and the Code of Conduct
- Independent Members

SFE has now published a further guide, in relation to Blogging and social networking, which it believes to be an effective medium of communication but not without risk.

Copies of all the Online Guides are available from the Monitoring Officer or they can be accessed via the following link on Standards for England's website:

<http://www.standardsforengland.gov.uk/Guidance/TheCodeofConduct/Guidance/Quickguides>

Any feedback you may have on SFE guidance may be emailed to enquiries@standardsforengland.gov.uk

Further advice on social networking was also given in Standards for England's Bulletin 47:

"When it comes to reaching certain groups quickly, cheaply and maintaining control over your message, many councillors find online methods hard to beat.

At the recent Cllr' 10 event, Standards for England and the IDeA ran an interactive session which looked at how councillors can use social networking effectively and ethically to engage with their local communities.

Some of the key messages from the session are:

- If you use blogs, Facebook or Twitter to help you to carry out your political work, rather than in your private capacity, your obligation to meet certain standards of conduct still applies.

You can still be involved in robust political debate and state your opinions strongly – the Code does not exist to gag you or fellow councillors or stop you expressing political views. It does, however, prohibit treating others with disrespect, bullying and bringing one's office or authority into disrepute.

It is important if you are blogging or tweeting personally and not in your role as councillor, that you do not act, claim to act, or give the impression that you are acting as a representative of your authority. It is worth noting that web links to official council websites may give or reinforce the impression that you are representing the council.

- You may use a blog to draw attention to a particular local issue and call the council to account, as you would in a public meeting. However, blog entries ridiculing or attacking particular officers, or making serious accusations about their personal competence or integrity, could amount to disrespect, even bullying, in some circumstances.
- It is worth considering that while the immediacy of social media can be a great benefit, it also has a downside.

For example, it is possible for you to Tweet on a matter seconds after leaving the council chamber – long before your opponents have issued press statements.

This can result in broadcasting spontaneous remarks that may quickly seem unwise. By the time you have reconsidered and deleted them, they may have been seen by thousands, Facebook-shared, re-Tweeted, linked to, and committed to local headlines.

That is fine, if you have got this message across just how you wanted to; less so if your post was an outburst in the heat of the moment. Such remarks are easily withdrawn, apologised for and forgotten when made in person, but posting them on the internet means that they have been published, and in a way that cannot be contained.

- It is important to note that good ethical standards are not limited to the Code of Conduct. While you may not be investigated for using online media, your conduct can still attract adverse publicity, even where the Code does not apply. For example, a regional newspaper recently called a councillor's blog post against a rival party a "toilet-mouthed tirade" saying:

"A [Code] breach it may not have been; childish, crude and demeaning to all who vote or follow politics it certainly was."

It is clear that social networking sites can enhance political debate and add positively to local politics when used correctly."

2010 ANNUAL ASSEMBLY OF STANDARDS COMMITTEES

This year's Annual Assembly is titled 'A place for standards' and takes place on 18 and 19 October at the ICC in Birmingham.

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

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) in the Register of Members' Interests.

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), 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.

CASES

Eden District Council

Standards for England has issued the following press release regarding the above case.

The First-tier Tribunal (Local Government Standards in England) (previously known as the Adjudication Panel for England) found that the Subject Member had breached the parts of the Code relating to the disclosure of confidential information and bringing his office or authority into disrepute, following letters he wrote to a local newspaper on two separate occasions, when he disclosed confidential information regarding discussions between the authority and a potential developer.

After his initial disclosure, the Subject Member told the council's monitoring officer that he would not repeat his action, before going on to make a further disclosure.

The Tribunal **suspended** the Subject Member for six months and imposed **training** on the Code and a written **apology** and stated that the suspension period would be extended for a further six months if these were not observed.

The Tribunal stated that the disqualification of the Subject Member had been considered, adding that his behaviour had shown a lack of insight and judgement, and had 'undermined (the Council's) credibility as a body able to maintain confidentiality'.

Dr Robert Chilton, Chair of Standards for England, said: *"While it is important that members of the public and the media have free and open access to information which directly affects them, there will inevitably be occasions when councillors need to keep information private.*

"It is crucial for the successful functioning of any authority that all parts of the Code are observed.

"We welcome the decision reached by the First-tier Tribunal and the sanction imposed. We believe this sends out a clear message to members of the public that appropriate action will be taken against members whose ethical standards fall short of expectations."

Isle of Wight Council

Standards for England has issued the following press release regarding the above case.

Following a Standards for England investigation, the First-tier Tribunal (Local Government Standards in England) found that the Subject Member failed to comply with the Code of Conduct by:

- Failing to declare a prejudicial interest in a planning application and failing to withdraw from a meeting of the Planning Committee when that application was under consideration.
- Seeking improperly (because he had a prejudicial interest in the matter) to influence a decision in the matter by his contact with a senior planning officer. A later conversation with a different officer was regarded as being likely to compromise the impartiality of that officer.
- Bringing his office as Leader of the Council, and the council itself, into disrepute.

The Subject Member was **suspended** from office for six months.

The Tribunal made recommendations to the authority that further **training** on the Code, focusing particularly on personal and prejudicial interests and interaction between members and officers, should be provided for members.

Newport City Council

The authority introduced age limits on vehicles licensed as hackney carriages and private hire vehicles, via a decision being taken by the Subject Member who failed to disclose that his brother was a licensed hackney carriage driver and that his half brother was a licensed private hire driver, in the area.

Moreover, the Subject Member's brother, who supported the introduction of age limits, was present in one of the meetings between council officials and trade representatives.

The Subject Member's decision was judicially reviewed. It was alleged that the Subject Member had breached the council's code of conduct for Members and the common law rule re bias.

The Subject Member stated that he had not disclosed an interest because he had already disclosed his brothers' occupations to the relevant officers in the licensing department and he had little contact with his brothers.

The High Court Judge stated that, as a matter of prudence, the Subject Member should have disclosed his relationship with his brothers at the meetings even if the association was not a close one.

In relation to the bias allegation, whilst the participation by his brother in the meeting did not "necessarily change the nature of their relationship for the purpose of the code of conduct", the Judge considered that "it may well change the perception a fair minded and informed observer would have", and if the Subject Member did not disclose the relationship because of advice from officers, then he was not served well by them".

As a result, the authority's decision to introduce age limits for licensed hackney carriages and private hire vehicles was quashed.

Hampshire Police Authority

Reports and minutes about an investigation into allegations that the complainant and a junior colleague had breached the Official Secrets Act were submitted to the Authority's Complaints and Professional Standards Committee and the Authority. The formal position of the Authority, in preparing to deal with enquiries from the media, was that the complainant's name should not be disclosed.

The Subject Member, as Chair of the Authority, was contacted by a reporter. During the conversation, the Subject Member indirectly confirmed the identity of the complainant, not by mentioning a name but by confirming the use of the name by the reporter.

The Standards Committee did not find that this amounted to conduct bringing the Member's office or authority into disrepute. It did, however, find that there had been a **failure to comply** with the Code's provisions re confidential information (paragraph 4(a)). At the time of the conversation with the reporter, the Authority's resolutions to treat the complainant's identity as confidential were still in place. The fact that it may have been known to other members of the police force and had previously been wrongfully disclosed to the reporter by someone else, did not amount to the complainant's identity being in the public domain.

The Committee required the Subject Member to undertake suitable **training** in dealing with the media.

The Subject Member appealed.

The Tribunal was satisfied that when the Subject Member released the information, she was acting in her official capacity. She received the information in confidence and ought reasonably to have been aware that it was of a confidential nature. The Tribunal concluded that the Subject Member had breached paragraph 4(a) of the Code and upheld the sanction imposed.

The Subject Member queried whether the investigating officer was entitled to consider paragraph 5 of the Code (disrepute), when the allegation only related to paragraph 4(a). The Tribunal felt that it was entirely proper for the investigator to consider whether, on the facts of the allegation, more than one breach of the Code had taken place. Under the relevant legislation, it is the allegation which forms the subject matter of an investigation: there is no requirement for a complainant to specify a paragraph of the Code which has been breached.

The investigator must decide whether on the facts underpinning the allegation there is a breach or breaches of the Code. One set of facts can, and often does, involve more than one breach of the Code.

Coventry City Council

The Subject Member, as Lord Mayor of the Council, hosted a community party, which was both ceremonial and a fund raiser for the Lord Mayor's charities. It was attended by over 500 people. The Subject Member attended in his official capacity and wore his mayoral chain of office.

The complainant attended the party with friends and colleagues including Ms X.

The Appeals Tribunal found, on the balance of probabilities that sometime during the evening the Subject Member, who had been drinking, danced with Ms X and some of her work colleagues. When Ms X left the dance floor and went to sit next to the complainant, the Subject Member joined them and a conversation ensued between all three, some of which was sexually explicit. The conversation included comments by the Subject Member about the age at which he lost his virginity and the comment that he "would like to f**k" Ms X.

The Subject Member was unable to recall the conversation however the complainant had consistently had a clear and unequivocal recollection of the conversation and the nature of what was said and the

complainant's recollection was corroborated by witnesses in their statements.

Another witness said that the Subject Member, the complainant and Ms X were having a conversation which she could not hear but noticed that it resulted in a lot of "shaking of heads and hand movements in a polite way but everything was not right". She stated that the body language was consistent with the nature of the conversation as told to her by the complainant shortly after the conversation had taken place. The complainant also told her about the conversation again in the taxi home at about 1am.

The Appeals Tribunal also noted that the complainant, upon arriving home, told her fiancée and made a written note of the conversation before she went to bed, when the events were still fresh in her mind. The next morning she discussed the incident with her line manager.

The Appeals Tribunal found that, on balance the complainant had given an entirely credible and truthful account of what had taken place at the party and therefore concluded that the alleged incident had occurred.

On the facts as found, the Tribunal was of the view that the conversation between the Subject Member, Ms X and the complainant was highly embarrassing, offensive and disreputable. It would have offended anyone who heard it and was totally inappropriate. The Subject Member had certainly failed to treat both Ms X and the complainant with respect and therefore he had failed to comply with the Council's Code of Conduct.

In addition to this, the Tribunal was of the view that by this conduct, the Subject Member had brought his office and authority into disrepute. Disrepute was defined as a lack of good reputation or respectability in the Oxford English Dictionary. In the Appeals Tribunal's view, on an objective standard, by having this type of conversation while at an official function, where the Subject Member

attended in an important ceremonial capacity, representing the Council, his conduct was capable of diminishing public confidence and harming the reputation of the office of Lord Mayor, the position of Councillor and, indeed, the authority as a whole. Therefore the Subject Member had failed to comply with paragraph 5 of the Code.

The Tribunal was very concerned that the Subject Member, in conducting his defence had attempted to malign the reputation of the complainant and impugn the standing of someone who did no more than their duty in making the complaint. In the Tribunal's view these were aggravating factors that may well have increased the appropriate sanction in this case.

The Tribunal found that the Standards Committee's sanction was reasonable and proportionate and decided to uphold its decision to **suspend** the Subject Member for 3 months and to require him to submit a letter of **apology**.

Contributors:

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North Yorkshire Legal & Democratic Services

Resources

www.standardsforengland.gov.uk

SFE Bulletins

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