

## NORTH YORKSHIRE COUNTY COUNCIL

### STANDARDS COMMITTEE

13 September 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 website ([www.standardsforengland.gov.uk](http://www.standardsforengland.gov.uk))

26 August 2010



North

Yorkshire County Council

# STANDARDS BULLETIN

## INTRODUCTION

Firstly, may I take this opportunity to say how much I am looking forward to my new role as Chairman of the Standards Committee, after picking up the baton from the former Chairman, James Daghish, who will be a hard act to follow.

In this issue of the Standards Bulletin you will find topical updates that reflect the current uncertain financial climate that we all find ourselves in, and how this is predicted to affect the current standards regime as we know it, as well as case updates from matters determined in other authorities.

I am very much looking forward to working with Members and Officers to continue the excellent work of the Standards Committee and to help to maintain the high standards of conduct within the authority.

### **HENRY CRONIN**

Chairman of the Standards Committee

## THE STANDARDS COMMITTEE

The Members of the Standards Committee:

- **Ms Hilary Bainbridge\***
- **County Councillor Philip Barrett**
- **Mr Henry Cronin\* (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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### IN THIS ISSUE:

- Decentralisation and Localism Bill
- SFE Annual Assembly Cancellation
- SFE to Publish Spending over £500
- Register of Members' Interests
- Decided Cases

## **\* GOODBYE TO STANDARDS FOR ENGLAND? \***

### **Decentralisation and Localism Bill**

The Government intends to introduce legislation to devolve greater powers to councils and neighbourhoods. In furtherance of this aim, the Government has announced proposals to **“abolish the Standards Board regime.”**

No clear details of the scope or implications of this proposal are yet available, however, **until** such time as the relevant legislation is passed, **the current statutory standards regime remains operative.**

Bob Chilton, Chair and Glenys Stacey, Chief Executive of Standards for England have issued a joint statement on the SFE website, responding to this news, as follows:

*“We are very disappointed at the Government’s decision to abolish the local government standards regime. Since 2007, Standards for England has dealt only with those matters which local authorities could not deal with themselves. Our recent review of this devolved local framework found that it is delivering increased confidence in the accountability of local politicians, improved member behaviour and contributing to better governance.*

*We do not have clear details as yet of what is proposed for the future, but for now the local standards framework remains pending legislative change. Our priorities are to fulfil our statutory duties, to support local authorities in maintaining high standards and to assist the government in developing and implementing any new arrangements.”*

The Government will set out more detail about the proposals to be contained in the legislation over the coming months.

Given the above, it remains to be seen whether any new Codes of Conduct for Members and Officers based on previous consultation and long-awaited, are ultimately introduced.

Members will be kept informed of developments.

## **2010 ANNUAL ASSEMBLY - CANCELLATION**

Standards for England have previously published information about the Annual Assembly of Standards Committees which was due to take place on 18 and 19 October at the ICC in Birmingham.

On 14 June 2010, Standards for England circulated an email explaining that the Assembly had been cancelled, owing to the announcement by the Government of its intention to abolish the standards regime: the SFE does not expect the proposed Decentralisation and Localism bill to be published until the autumn, when the implications for local government and the standards regime will be clearer. This will be too late to inform the Assembly event preparations, hence the decision by the SFE to cancel the 2010 Annual Assembly.

Standards for England have stated that they are keeping in touch with Monitoring Officers throughout the country and will update them on the situation as soon as developments are communicated from Central Government.

## **SFE TO PUBLISH SPENDING OVER £500 ONLINE**

Standards for England has now joined the Department for Communities and Local Government (CLG) in making details of expenditure on goods and services over £500 available online, following proposals from Eric Pickles MP to make local government spending more transparent.

The publication of SFE’s spend data for the period April 2009 to March 2010 follows new Government requirements for local authorities to publish their spending on goods and services above £500, online, by January 2011.

CLG and its Arms Length Bodies – which include Standards for England – will make spend data from April 1, 2010 to September 30, 2010 available in October.

From November, CLG and its Arms Length Bodies will publish details of all spending over

£500 online as a matter of routine at the end of each month.

For further information on publication of CLG spend data or to view Standards for England expenditure for the period April 2009 to April 2010, please log on to [www.communities.gov.uk/publications/corporate/spendingdata0910](http://www.communities.gov.uk/publications/corporate/spendingdata0910)

## **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**

### **Allerdale Borough Council**

The Subject Member was found to have failed to declare and act upon a prejudicial interest he had by virtue of his Chairmanship of Broughton British Legion and was suspended for six months by the Standards Committee. The Subject Member appealed.

The future of the British Legion Hall was due to be discussed at a meeting of Broughton Community Council. The Subject Member stated that at the start of the meeting, he had declared a personal interest in the item however there was no evidence that the item was discussed. The Subject Member stated that it had become apparent some time before the meeting that the item would not be considered. The evidence of the Council's executive officer was that no consideration of the item occurred.

The Tribunal stated that, according to the Code of Conduct, "*where you have a personal interest in any business of your authority and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration*"; and "*where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.*"

The Tribunal stated that the latter does not change the point at which the interest should be declared, it changes what is declared and there are other consequential matters as a result of that interest or its declaration.

Since the meeting did not consider the item regarding the British Legion Hall, no duty to declare the existence and nature of his interest arose and therefore there was **no breach** by the Subject Member, irrespective of whether or not his interest was prejudicial.

The Tribunal rejected the finding of the Standards Committee and its decision ceased to have effect immediately.

## Campbell Park Parish Council

It was alleged that the Subject Member had failed to comply with the Parish Council's Code of Conduct when she improperly sought to interfere with the award of the Certificate in Local Council Administration (CiLCA) to the Parish Clerk.

In late 2006, the Parish Clerk was appointed. It was a condition of his appointment that he obtained the CiLCA. In addition he had to complete a six month probation period, which he satisfactorily completed in July 2007 although at that time he had not been awarded the CiLCA.

The Clerk failed the CiLCA in August 2007. He failed again in February 2008. The Clerk appealed and the Chief Verifier reviewed the whole of the work submitted by the Clerk. The Chief Verifier concluded that in spite of the two failures overall, the Clerk had reached the required standard. Accordingly the Chief Verifier instructed that the CiLCA be awarded to the Clerk.

In March 2008 the Subject Member was told that the Clerk had been awarded the qualification on appeal, together with supporting information, including that the Chief Verifier had said it would be 'iniquitous' to make the Clerk submit further work.

A conversation took place in the Clerk's office between the Subject Member and the Clerk in which the Subject Member told the Clerk that she knew he had obtained his qualification on appeal; that the decision had caused a 'furore' at the National Association of Local Councils ("NALC"); that he would probably receive a letter from NALC on the matter; and that the position of the Chief Verifier was in some jeopardy. In reality, this was not the case.

The Subject Member complained about the matter to representatives of various local government organisations, via email and in meetings. The email read:

*"... I am outraged. We have a qualification which is already not of the highest standing, and certainly does not best serve those many superb clerks our sector has. This judgment demeans my council. We are now foist with a clerk who patently does not understand our sector nor the legal structure pertaining to it.*

*There is no earthly reason why a clerk who patently fails should be passed, just because some arbitrary decision has been made, that he or she has to sit a third time. In doing this the chief arbiter has now foist upon my council a clerk who is not up to the grade.*

*I insist this is fully investigated it is against all laws of natural justice.*

*Should this not be properly investigated and this decision rescinded I personally will take this to the highest level of government..."*

At the time of the events, the Subject Member represented the Council on various local government bodies, including NALC, which is one of the bodies comprising the Monitoring and Verification Board, responsible for awarding the CiLCA. The Tribunal had to determine whether the Subject Member was acting in her official capacity for the purpose of the Code of Conduct when she sought to interfere with the award of the certificate.

The Tribunal found that factors such as sending the email from her private email address and signing it using her NALC title indicated that the Subject Member's actions did not give the impression of acting as a representative of the Parish Council. However, comments such as: *"This judgment demeans my council. We are now foist with a clerk who patently does not understand our sector nor the legal structure pertaining to it"* *"...the chief arbiter has now foist upon my council a clerk who is not up to the grade* indicate a close connection with the Parish Council.

Looking at the language of the email overall, the Tribunal found that a reasonable person would find the language used provided a strong link to the Parish Council and to apparent established concerns about the poor performance of the Parish Clerk. On this basis a reasonable person would conclude that the Subject Member acted, claimed to act or gave the impression she was acting, as a representative of her Parish Council.

In relation to the conversation between the Subject Member and the Clerk, the Tribunal concluded that it related to Parish Council business and therefore the Code applied, because the conversation took place on Parish Council premises, it related to directly to the Clerk's position, and the Subject Member had been part of the interview panel which had appointed the Clerk.

The Tribunal found that the making of groundless and untrue comments critical of the Clerk's competence in the most disparaging language brought the office of the Member making those comments into **disrepute**; and that the making of such unfounded statements was an attempt by the Subject Member to **improperly confer a disadvantage** on the Clerk under the Code.

The Tribunal further found that the unjustified attempt, whether or not it had a realistic chance of success, to get the Clerk's Certificate rescinded amounted to an attempt by the Subject Member to use her position as a Member to **improperly confer a disadvantage** on the Clerk.

Up to the hearing, the case for disqualification as the appropriate sanction was reinforced by the fact that the Subject Member had not accepted her conduct was wrong and had harmed the Clerk's reputation. However, at the hearing, the Subject Member did not dispute the facts, accepted that her conduct was wrong and that she had breached the Code, and was sorry for its impact on the Clerk. The Tribunal felt this change of heart was genuine and found that it made **suspension**, rather than disqualification, the appropriate sanction.

### **Shropshire Council**

During 2007/2008 an application for a footpath to be recorded on the definite map was submitted to the Council. The footpath crossed the Subject Member's property and he objected to the application. However, at that time, the Subject Member was not a Councillor.

Prior to consideration of the application by the Rights of Way Committee, the Subject Member submitted a formal complaint about alleged partiality of the Definitive Map Review Officer. The matter was therefore withdrawn from the agenda whilst an investigation was carried out. The investigation concluded that there had been no wrongdoing on the part of the Officer.

The matter was then considered by the Committee. The Subject Member and his solicitor attended the meeting and spoke against the application and circulated documents in support of the Subject Member's position. The Committee rejected the officers' recommendation that there was sufficient evidence to show that a public right of way

subsisted or was reasonably alleged to subsist, which meant that in accordance with the Council's procedures, the matter was automatically deferred to a meeting of the new Area Regulatory Committee to give officers the opportunity of submitting a further report.

The matter was therefore referred to the Area Regulatory Committee. The Subject Member had, by this time, been elected to the Council and had been appointed to the Committee. Prior to the meeting, the Subject Member circulated a letter to Members of the Committee and attached a number of documents which had been circulated to the Rights of Way Committee at the earlier meeting. The letter contained the following:

*"... This particular case, in which I have a personal interest as my own home, is clear to all those who know the factual history of the property that the route in question was always a private right of access for the landowner and nothing else. However certain vindictive individuals are trying to force a public footpath through our front garden, one metre from our front door...."*

*As the land owner I feel particularly aggrieved at the lack of impartiality, objectivity and independence shown by the officer handling this case ... and the biased way her reporting has been constructed...."*

In accordance with advice the Subject Member had received from the solicitor advising the Committee and the Monitoring Officer, he declared a personal and prejudicial interest at the meeting and left the room prior to the Committee's consideration of the matter. He did not exercise his right to speak, but arranged for one of his witnesses to address the meeting.

The Tribunal found that the information contained in the letter was inaccurate and misleading. Furthermore, by using words such as "lack of impartiality, objectivity, independence and biased" the Subject Member was making a personal attack on the Definitive Map Review Officer's integrity and professionalism. The Tribunal also found that the letter was an attempt to influence the decision of the Committee on the Subject Member's behalf.

The Tribunal found that he was acting in his official capacity when the issues which were the subject of the hearing arose. The Subject

## **Fenland District Council**

Member attended the meeting as a Councillor and withdrew from the meeting when the issue in which he declared an interest arose. He signed the letter circulated to all Members of the Committee as "Councillor X" and referred in the letter to "our codes of conduct" and "our meeting" and to his "fellow Councillors".

It was held that the Subject Member had failed to treat others with **respect** and had brought his office/authority into **disrepute**. Failure to treat others with respect occurred when unfair, unreasonable or demeaning behaviour was directed by one person against another. Disrepute was understood to mean a "lack of good reputation or respectability": anything which diminishes the member's office or their authority, or which harms or could harm the reputation of an authority will bring that office or authority into disrepute.

The Subject Member's comments that the Definite Map Review Officer lacked impartiality, objectivity and independence and showed bias were a personal attack and amounted to personal criticism of a junior member of staff. It was inappropriate to make these personal comments in an open letter circulated widely to all members of the Committee. The Officer had no right of reply, no opportunity to contradict what was said about her and she was, in effect, defenceless against these accusations, all of which had been investigated by senior officers and found to be unsubstantiated.

In circulating this misleading and inaccurate letter, the Subject Member had attempted to **use his position improperly to secure a personal advantage** for himself by persuading the Committee to decide on this personal matter in his favour, and had **sought to improperly influence a decision** of the Committee about business in which he had a prejudicial interest.

The Tribunal viewed the above breaches of the Code as serious, bearing in mind that they involved personal advantage, undermining officers and bringing Members and the authority into disrepute. The Subject Member had not shown any insight into the effect of his conduct on the Definite Map Review Officer or his authority therefore, given the nature of the breaches, a fair and proportionate sanction in this case would be a **six month suspension**. The Subject Member was also required to provide a written **apology** to the complainant and to undertake a further period of **training** before resuming his duties.

It was alleged that the Subject Member disclosed confidential information to the Council's Chief Executive in the form of an email sent by another Councillor (Councillor X) marked 'Strictly Confidential'.

The Ethical Standards Officer (ESO) found that Councillor X sent the email in question to Council and local Conservative group members. The Subject Member was not included. In the email Councillor X expressed his concern about the Council's failure to progress plans for a particular leisure centre.

Councillor Y received Councillor X's email and telephoned him to discuss the matter. Councillor Y then telephoned the subject Member (who was then the deputy leader of the Council and Conservative group), and forwarded him a copy of the email, to get his opinion of Councillor X's proposals.

The Subject Member subsequently met with the Council's then Chief Executive to discuss concerns he had about the email, in particular some comments made about Council officers. During the meeting the Subject Member provided the Chief Executive with a copy of the email.

The ESO considered that the email more resembled a party political communique than Council business. However, in reaching a decision on whether the Subject Member was acting in his official capacity when disclosing it to the Council's Chief Executive, the ESO took into account the fact that the information disclosed by the Subject Member came into his possession because Councillor Y considered that he had a right to see it as deputy leader of the Council and the relevant portfolio holder.

Also relevant is the fact that the content of the email related to matters that he had been involved in as a councillor in the past and that the disclosure was made to the Council's Chief Executive as part of a meeting to discuss whether Councillor X's proposals were feasible.

Given these facts, the ESO was satisfied that in passing the email to the Council's Chief Executive, the Subject Member was acting in his official capacity.

The ESO considered that the email included a limited amount of information of a confidential

nature. Given that the Council's Chief Executive had not been on Councillor X's circulation list and the Subject Member provided him with a copy of the email, he considered that the Subject Member had disclosed information which he believed or ought reasonably to have been aware was of a confidential nature.

The ESO then considered whether any of the exceptions listed in the Code, relating to confidential information, applied. It was not in dispute that the Subject Member did not have Councillor X's consent before he made his disclosure. In addition, he was not required by law to disclose the email and although he was seeking the Council's Chief Executive's advice on the matter, the Subject Member placed no restriction on his subsequent use of the information.

Balancing all of the relevant factors, the ESO concluded that the subject Member had been motivated by genuine concerns and had acted reasonably and in the public interest in making his disclosure to the Chief Executive only. He noted that no detriment had occurred to any party as a result of either Councillor X's original email nor the Subject Member's disclosure.

The ESO therefore found that there had been **no breach** of the Code.

### **Fenland District Council – connected case**

A further case was considered connected to the Fenland DC case listed above.

It was alleged that Councillor Y in the previous case disclosed confidential information to the subject Member of the previous case, by passing him the email he had received from Councillor X which had been marked 'Strictly Confidential'.

In reaching a decision on this matter the Ethical Standards Officer (ESO) did not believe that the email's reference to council business settled the issue of whether Councillor Y was acting in his capacity as a councillor when he forwarded it. The audience for this email was members of the local Conservative group, some of whom were not councillors. Although the email, like many involving local politics, touched on matters that the council had considered, its primary purpose and content was political. The ESO had no doubt that Councillor Y's act of passing the

email to a senior political colleague was essentially a party political matter.

The ESO was satisfied that in forwarding the email, Councillor Y was **not acting in his official capacity** as a councillor and therefore **did not fail to comply with the Code**.

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#### **Resources**

[www.standardsforengland.gov.uk](http://www.standardsforengland.gov.uk)

SFE Bulletins

[www.adjudicationpanel.tribunals.gov.uk](http://www.adjudicationpanel.tribunals.gov.uk)



