

NORTH YORKSHIRE COUNTY COUNCIL

STANDARDS COMMITTEE

24 January 2011

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
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Background Documents:

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

13 January 2011



STANDARDS BULLETIN

INTRODUCTION

Last month the Decentralisation and Localism Bill finally arrived, bringing with it the proposed changes to the standards regime.

The fine detail contained in the Bill is currently being considered by Members and Officers but the headlines are contained in the Bulletin.

Members will be kept fully informed of developments but it is important to remember that until the Bill is enacted, the current Members' Code of Conduct and standards regime will continue to apply.

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

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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*** ABOLITION OF STANDARDS REGIME ***

Decentralisation and Localism Bill

The Decentralisation and Localism Bill was published on 13 December 2010. It is anticipated that the Bill will receive Royal Assent late 2011.

Details of the Bill are available on the Department for Communities and Local Government website:

<http://www.communities.gov.uk/localgovernment/decentralisation/localismbill/>

<http://services.parliament.uk/bills/2010-11/localism.html>

Standards for England has confirmed, on its website, that it is likely that it will cease to investigate complaints in late 2011 and will be formally abolished in early 2012. It has established a specific webpage on its website to publish developments in relation to the national standards regime:

<http://www.standardsforengland.gov.uk/news/futureofthelocalstandardsframework/>

Prior to the publication of the Bill, Standards for England received a letter from Local Government Minister Bob Neill MP setting out the Government's proposition in detail. The letter can be downloaded from the SFE website using the following link:

<http://www.standardsforengland.gov.uk/media/letter%20from%20bob%20neill.pdf>

Subject to the necessary legislation being enacted, the **proposed changes** under the Bill are as follows:

- a) the abolition of Standards for England. None of the SFE's functions will be transferred to other bodies;
- b) the abolition of the *requirement* for local authorities to have standards committees;

NB: local authorities will be able to establish voluntary standards committees to consider complaints

about the conduct of members and co-opted members, should they so wish.

Such committees will be able to censure Members but will not be able to suspend or disqualify Members from authority membership.

- c) the removal of the First-tier Tribunal's (Local Government Standards in England) jurisdiction over member conduct
- d) revocation of the statutory General Principles;
- e) revocation of the Members' Code of Conduct;

NB: authorities will be able to adopt their own, voluntary code of conduct should they so wish.

The current Code of Conduct and standards framework will continue to function in the usual way until a fixed date ("the appointed day"), probably two months after the Bill receives Royal Assent.

Until the appointed day, an allegation of misconduct under the Code can still be made to the Standards Committee. After the appointed day, no further allegations may be made under the current standards regime.

Transitional arrangements will be put in place to deal with those cases "in the system" eg awaiting investigation, at the appointed day:

- any investigations being undertaken by Standards for England will transfer, on the appointed day, to the local authority which referred the investigation, for conclusion;
- standards committees will remain established until the last complaint it is considering, referred either internally or from Standards for England, has been dealt with;
- the suspension sanction will be removed from standards committees for the transitional period. Consequently "the most a standards committee could do is, for instance, to issue a member with a

censure or a request that they undergo training.”

- the right of appeal will not exist for those cases standards committees deal with under transitional arrangements;
- any cases with which the First-tier Tribunal is dealing with on the appointed day will be concluded by that tribunal. It will not receive any appeals against standards committee rulings after that date;

In place of the current regime, Members will be required to continue to register and declare personal interests and will not be allowed to use their position improperly for personal gain. Regulations will set out further details.

Clause 17 of the Bill provides that regulations may require the monitoring officer to establish and maintain a register of members’ and co-opted members’ interests and may also make provision for:

- (a) which financial and other interests must be recorded in that register;
- (b) the disclosure of specified interests to meetings;
- (c) preventing/restricting member participation in authority business to which a declared interest relates;
- (d) the granting of dispensations;
- (e) the sanctions which may be imposed by the authority for breach of the regulations;
- (f) requiring the register to be available to the public.

The Government intends that “wilful failure” to comply with these requirements will constitute a **criminal offence**.

Clause 18 of the Bill states that a person who is a member/co-opted member of a relevant authority commits an offence if, without reasonable excuse, the person—

- (a) **fails to register** a financial/other interest in accordance with the regulations;

- (b) **fails to disclose** an interest of a kind specified in such regulations in accordance with the regulations; or
- (c) **takes part** in authority business to which a disclosed interest relates **contrary to a prohibition or restriction** imposed by the regulations.

The penalty that a magistrates` court may impose upon conviction of such an offence will be a **fine** of up to £5,000.

The court may also order the **disqualification** of the person from being a member/co-opted member of a relevant authority (the authority in question or any other relevant authority) for up to five years.

A prosecution for such an offence may be brought within 12 months of sufficient evidence to warrant prosecution coming to the prosecutor’s knowledge, but only by or on behalf of the Director of Public Prosecutions. However, no such proceedings may be brought more than three years after the commission of the offence, or, in the case of a continuous contravention, after the last date on which the offence was committed.

Proposals regarding predetermination

Clause 13 in Chapter 4 of the Bill clarifies the rules on predetermination and bias.

Predetermination occurs where a fair minded and well informed observer, looking objectively at all the circumstances, considers there is a real risk that a decision maker has refused to consider a relevant argument or would refuse.

Clause 13 makes provisions to attempt to ensure that councillors can freely discuss issues, including expressing a view and/or campaigning on an issue, and then later speak or vote on those issues.

Clause 13(2) states that that a relevant authority member/voting co-opted member decision-maker is not to be taken to have had, or to have appeared to have had, a closed mind when making a decision just because the decision-maker had previously done anything that directly or indirectly indicated what view the decision-maker took, or would or might take, in relation to a matter and the matter was relevant to the decision. This reflects the current common law position that such matters would

amount to predisposition (having and expressing an open-minded view, provided the member is prepared to reconsider their position in the light of all the evidence and arguments) rather than predetermination.

The Standards Committee is currently considering the impact of the Bill, in standards terms, upon the Authority. Members will be kept informed of developments.

STATEMENT BY SFE CHAIRMAN

On 20 December 2010, the Chairman of Standards for England, Dr Robert Chilton, made the following statement:

Our Chief Executive Glenys Stacey is leaving the organisation at the end of February 2011 to take up a new position as Chief Executive of Ofqual, the Office of Qualifications and Examinations Regulation.

Glenys has been Chief Executive here since the organisation became a strategic regulator, in May 2008. Under Glenys' leadership the organisation has developed its regulatory philosophy and approach. Our achievements have included implementing the local arrangements (whereby local government manage the majority of complaints and investigations), halving the time we take dealing with those investigations we still do deal with here (because they are not suitable for resolution locally), reviewing the standards framework and making recommendations in a Proportionality Review to Government earlier this year on ways to simplify the regulatory framework for standards in local government, and transforming the way this organisation is configured and works, so that we could deliver more for less.

We wish Glenys all the best for the future, as she takes up a new role in a different field of regulation. We intend to make arrangements internally to cover the vacancy that will arise when Glenys leaves.

CASE REVIEW 2010

The Standards for England Case Review 2010 is now available to download from the SFE website at:

<http://www.standardsforengland.gov.uk/CaseinformationReporting/OnlineCaseReview2010/>

It supersedes The Case Review 2007 and The Case Review: 2008 Digest previously published and provides an up to date, paragraph by paragraph, analysis of the Code of Conduct.

The SFE intends to keep The Case Review under 'constant review' and will inform Monitoring Officers of changes as they are made. Members will, of course, be kept informed of any developments.

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

North Tyneside Metropolitan Borough Council

The following Case Summary is published on Standards for England's website:

The complainant alleged that the subject Member used the services of a council officer to produce leaflets in support of their political Party and other materials supporting the campaign to re-elect the elected mayor. These services included editing of the leaflets and other materials and arranging their printing and distribution. It was evident to the Ethical Standards Officer ("ESO") that the subject Member had played no part in the production of the leaflets and other materials.

The ESO found no evidence that the subject Member had given instructions to the council officer in relation to the leaflets and other materials. She was therefore not responsible for any involvement the council officer may have had in the production of the leaflets and other materials.

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

Oldham Metropolitan Borough Council

The following Case Summary is published on Standards for England's website:

A planning application for a Mosque had been submitted to the authority in December 2009 and was due to be considered by its planning committee on 24 March 2010. However, the week before the meeting it was not on the published agenda because there were unfinished negotiations over a commuted sum to be paid by the applicant under section 106 of the Town and Country Planning Act.

On the day of the meeting, Councillor X, the Chair of the Planning Committee, accepted the application as an item of urgent business. The two complainants alleged that the Chair accepted the item, and that the other Subject Members pressured him to do so, because it enabled Liberal Democrat election candidates to claim the credit in their election literature for the approval of the application.

The complainants further alleged that these senior members, including the leader, deputy leader and other cabinet members, had misused their positions to secure an advantage for their local election and parliamentary candidates, bringing the authority and their offices as councillors into disrepute. Shortly after the publication of the agenda, Councillor Y, in whose ward the application was based, had asked for it to be considered as a matter of urgent business. This request was declined. The Ethical Standards Officer (ESO) found no evidence of improper pressure.

With the exception of Councillor X, all the Subject Members attended a Liberal Democrat election rally on 21 March at which representatives of the Mosque raised concerns with members about the progress and viability of their application and made an increased offer of section 106 money. The ESO found no evidence that these Subject Members did anything related to the Mosque application after attending the rally. He therefore dismissed the allegations against those three the Subject Members quickly.

Following the rally Subject Members A and B informed a senior officer of the council that the Mosque had increased its section 106 offer. The ESO did not consider that conveying this information was an abuse of the members' position or inappropriate in any way.

On 22 March, after the relevant officers had agreed the section 106 offer, Councillor X added the application to that Wednesday's agenda as an urgent item. The ESO found no evidence that he had been pressured to make this decision. Officers subsequently questioned the reasons for his decision given the legal requirement for the chair to cite 'special circumstances' to justify taking business as urgent.

There then followed an email exchange involving Subject Members C, A and X concerning the grounds for the chair's decision.

Although the ESO expressed concerns about some of the email content, he did not consider that the emails amounted to bullying or an attempt to pressure Councillor X into taking a particular course of action. It was clear from the evidence that Councillor X had already made his decision.

On the day before the planning committee meeting, Councillor X spoke to Councillor B who explained that the Mosque feared that it would lose some of the funding promised for the development if consideration of the planning application was delayed.

Councillor X was advised by a legal officer of the council that this was a valid ground for treating the application as urgent. The ESO concluded that Councillor B and the other Subject Members had not breached the Code of Practice.

In the event the application, which came with an officer recommendation for approval, was approved by the planning committee with one abstention.

The ESO found that **none** of the Subject Members failed to comply with the Code.

Contributors:

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Resources

www.standardsforengland.gov.uk

SFE Bulletins

www.adjudicationpanel.tribunals.gov.uk

