

NORTH YORKSHIRE COUNTY COUNCIL

STANDARDS COMMITTEE

11 February 2013

Local Ethical Framework Developments

1.0 PURPOSE OF REPORT

- 1.1 To update Members on the development of the new ethical framework under the Localism Act 2011.

2.0 BACKGROUND

- 2.1 The Localism Act 2011 ("the Act") abolished the previous standards regime (including the Members' Code of Conduct and Standards Committee arrangements) and made provision for a new ethical framework which was adopted by the Authority at its July meeting last year on the recommendations of the former Standards Committee and after consultation with the Members' Working Group on the New Ethical Framework.

- 2.2 Members may feel it would be helpful to have a standing item on each agenda setting out developments in relation to the national standards regime. This would ensure that Members are up to date with developments and aware of the type of issues being raised.

3.0 DISPENSATION ISSUE

- 3.1 An issue has arisen nationally in relation to the requirements of the new ethical framework in terms of setting the Council budget and Council Tax, and the possible need for dispensations for members in relation to these issues.

- 3.2 One view is that Members may have a disclosable pecuniary interest ("DPI") in the budget/council tax setting (via their registered land ownerships in the Register of Members' Interests - disclosable pecuniary interests). If a member is present at a meeting and has a disclosable pecuniary interest in "any matter to be considered, or being considered, at the meeting", they must declare the interest, leave the room and not participate in the debate or vote on the item.

- 3.3 Under the previous national model Code of Conduct, there was a statutory exemption for members against having a prejudicial interest in business relating to the Council functions of setting the council tax or precept; however, there are no equivalent provisions in the new standards framework, and the issue is purely whether or not Members have a disclosable pecuniary interest with no statutory discretion or de minimus provision.

- 3.4 There is, therefore, uncertainty as to whether Members' ownership of land or an interest in land which is registered in the Register of Members' Interests (and therefore a disclosable pecuniary interest) prevents them from taking part in the discussion and vote upon setting the Council budget and Council Tax.

- 3.5 CLG has given an 'informal' view that this situation would not give rise to a DPI because council tax affects all local residents irrespective of whether they are a

councillor and that that was not the intended effect. However, commentators have written extensively that whilst that may not have been the intent, it is an unintended consequence of how the legislation has been drafted.

- 3.6 To date, NYCC has taken a pragmatic view that this is not a matter in respect of which a dispensation is required for Members, given that it is not their specific home address in particular (but council tax for properties generally within the North Yorkshire area), being considered at the Council meeting. However, this issue is gaining momentum nationally, with a divide of opinion as to whether or not dispensations are required. The matter will be raised at the next meeting of the York and North Yorkshire Monitoring Officer Group on 4 February 2013 and an update will be given at the Standards Committee's meeting.

4.0 14th REPORT OF THE COMMITTEE ON STANDARDS IN PUBLIC LIFE

- 4.1 The Committee on Standards in Public Life is an advisory Non-Departmental Public Body (NDPB) sponsored by the Cabinet Office. The Chair and members are appointed by the Prime Minister.

- 4.2 The Committee on Standards in Public Life has recently published its 14th report, "Standards matter - A review of best practice in promoting good behaviour in public life", which is 75 pages long and available to download from the Committee's website at http://www.public-standards.org.uk/OurWork/Latest_News.html

- 4.3 Key extracts from the report are set out below:

- *The Committee felt that the time was right to undertake a review of the key lessons that have been learnt since the Nolan Committee's first report was published in 1995 about how to improve ethical standards in public life – to stand back and reflect on what has been achieved and what still needs to be done...*
- *This report sets out our key conclusions. We do not pretend to have all the answers. But we have drawn together the evidence from a growing body of experience and an expanding field of research. In doing so we have attempted to think through some of the theoretical issues around ethical standards and to make practical suggestions which we hope will be of assistance to those who find themselves having to grapple with these difficult issues on a daily basis. We have also identified a number of existing and emerging risks which we believe need to be addressed more energetically before we can be confident that high standards in UK public life are being consistently achieved.*
- *Our key message is this. Much of the basic infrastructure to support high standards is now in place. Most public services and public office-holders have adopted statements of high level principles and codes of practice and are subject to some form of external scrutiny. But it is self-evident, not least from recent events, that these mechanisms by themselves are not enough. Many of those whose integrity has been called into question in recent months and years seem to have behaved inappropriately not because they were unaware of what was expected but because they did not find it expedient. High standards of behaviour need to be understood as a matter of personal responsibility, embedded in organisational processes and actively and consistently demonstrated, especially by those in leadership positions. This report presents some ideas about how this may be achieved.*

- *A set of broadly expressed **principles**. These should be aspirational, rooted in the core purposes and values of an organisation or profession and easy to communicate and understand. The seven principles of public life fulfil that purpose. They have now been widely disseminated and in some cases adapted. We believe they remain broadly relevant. But we think it appropriate to revise some of the brief descriptions usually associated with each principle to bring them up to date and provide greater clarity, particularly in relation to honesty. We have set out new descriptions in **Chapter 3**.*
- *... a significant number of important standards issues currently require attention ... Issues over which the Committee intends to keep a watching brief, and investigate if necessary include:*
 - *local government standards (concerns about the impact of the regime introduced by the Localism Act 2011);*
- *... The Localism Act 2011, abolished Standards for England, removed the ability of local authorities to suspend members as a sanction for poor behaviour and disbanded local standards committees. It introduced a new offence of failing to declare or register a pecuniary interest. Following amendments to the original Bill during its passage through Parliament it also required local authorities to develop their own code of conduct based on the seven principles of public life and to appoint an Independent Person to be consulted during the investigation of any complaint. The new, slimmed down arrangements have yet to prove themselves sufficient for their purpose. We have considerable doubt that they will succeed in doing so and intend to monitor the situation closely...*
- ***7.27** We have other concerns about the new arrangements which apply even in those authorities where strong leadership on standards does exist. The first is that under the previous arrangements local authorities had the power to suspend members for varying periods of time as a sanction against poor behaviour. The only sanctions now available, apart from through the use of party discipline, are censure or criminal prosecution for deliberately withholding or misrepresenting a financial interest. We do not think these are sufficient. The last few years have seen a number of examples of inappropriate behaviour which would not pass the strict tests required to warrant a criminal prosecution, but which deserves a sanction stronger than simple censure. Bullying of other members or officers is one category of offence which will be difficult to deal with adequately under the new arrangements.*
- ***7.28** Our second concern is about the new and so far relatively untested arrangements for independent involvement in the disciplinary process. Under the previous arrangements allegations about poor behaviour were determined by standards committees independently chaired by individuals who were not themselves members of the local authority. Under the new arrangements every local authority must appoint at least one independent person whose views it will seek, and take into account, before making its decision on an allegation that it has decided to investigate. We doubt that this will be sufficient to provide assurance that justice is being done and, equally important, that it is seen to be done.*

4.4 Members will see from the above extracts that the Committee on Standards in Public Life has concerns regarding the new ethical framework under the Localism Act and intends to monitor developments.

4.5 Members will also note that the Committee has revised the seven principles of public life, which previously informed the statutory General Principles (repealed by the Localism Act but currently appended to the Council's new Code of Conduct for Members). The new principles which the Committee will use in all future publications are set out in **Appendix 1** to this report, with the original descriptions set out in **Appendix 2** for Members' information. The main implications of the changes appear to be:

- The main headings of the principles remain the same (eg Selflessness, Integrity), with the addition in the new principles of a 'Preamble', which expands upon the italicised note at the end of the previous principles;
- The new Preamble makes it clearer that the principles also apply to local government employees;
- Re 'Integrity': this principle has been expanded to reference the need to declare interests, presumably as there are now potential criminal sanctions for breach of the interests' regime;
- Re 'Objectivity': this principle has been expanded to reference the need for objectivity in *all* decisions (not just the particular circumstances mentioned in the former principles);
- Re 'Openness': the emphasis of the revised principle is that information should not be withheld unless there are 'clear and lawful' reasons for so doing;

4.6 The previous seven principles of public life informed the statutory General Principles, which were repealed by the Localism Act but appended (at pages 10 and 11) to the Council's new Code of Conduct for Members under the Act. A copy of the Code is attached at **Appendix 3** to this report for ease of reference. Members are requested to consider whether the Code of Conduct should be amended to reflect the revised principles of public life. Any changes to the Code will require approval from full Council.

5.0 **CONCLUSION**

5.1 Members are requested to consider the issues raised in this report.

6.0 **RECOMMENDATIONS**

6.1 That the Committee notes the contents of this report.

6.2 That Members consider whether the Code of Conduct should be amended to reflect the revised principles of public life.

CAROLE DUNN
Monitoring Officer

Background Papers:

- The Localism Act 2011
- Committee on Standards in Public Life 14th report, "Standards matter - A review of best practice in promoting good behaviour in public life"

County Hall
NORTHALLERTON

31 January 2013

Figure 4: The seven principles of public life

Principle	Revised description
<i>Preamble</i>	The principles of public life apply to anyone who works as a public office-holder. This includes all those who are elected or appointed to public office, nationally and locally, and all people appointed to work in the civil service, local government, the police, courts and probation services, NDPBs, and in the health, education, social and care services. All public office-holders are both servants of the public and stewards of public resources. The principles also have application to all those in other sectors delivering public services.
<i>Selflessness</i>	Holders of public office should act solely in terms of the public interest.
<i>Integrity</i>	Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
<i>Objectivity</i>	Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
<i>Accountability</i>	Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
<i>Openness</i>	Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.
<i>Honesty</i>	Holders of public office should be truthful.
<i>Leadership</i>	Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

The seven principles of public life

In **Chapter 3** we set out amended descriptions for the seven principles of conduct in public life. Below, for reference, we set out the original descriptions as formulated in the Committee's First Report.

SELFLESSNESS: Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

INTEGRITY: Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

OBJECTIVITY: In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

ACCOUNTABILITY: Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

OPENNESS: Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

HONESTY: Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

LEADERSHIP: Holders of public office should promote and support these principles by leadership and example.

These principles apply to all aspects of public life. The Committee has set them out here for the benefit of all who serve the public in any way.

CODE OF CONDUCT FOR MEMBERS OF NORTH YORKSHIRE COUNTY COUNCIL

This Code sets out the standards of behaviour required of you whenever you are acting as a Councillor of North Yorkshire County Council. This Code also applies to any person appointed as a co-opted member with voting rights on any Committee of the County Council and references in this Code should be construed accordingly.

You must sign an Undertaking to comply with this Code of Conduct before acting as a Councillor or voting co-opted Member (“Members”).

The Code has been adopted by the County Council and also requires compliance with the general principles of public life set out at the end of the document. The Council has established a Standards Committee, consisting of members of the Council, to deal with any allegations of breaches of the Code.

1. You must not treat others with disrespect.
2. You must not do anything which may cause the County Council to breach any equality enactment.
3. You must not bully or intimidate any person, or attempt to bully or intimidate them.
4. You must not do anything which compromises the impartiality of anyone who works for or on behalf of the Council, or do anything that is likely to compromise their impartiality.
5. You must not disclose information which is given to you in confidence or which you believe is of a confidential nature, or ought reasonably to be aware is of a confidential nature, unless:
 - You have the permission of a person authorised to give it; or
 - You are required by law to disclose the information; or
 - You disclose it to a third party for the purpose of obtaining professional advice, provided that the third party agrees not to disclose the information to any other person; or
 - The disclosure is reasonable; and is in the public interest; and is made in good faith; and is only made after having complied with any reasonable requirements of the Council to delay disclosure or to maintain confidentiality.

Before disclosing any information under this paragraph, you must consult the Monitoring Officer and/or the Chief Executive Officer.

6. You must not prevent another person gaining access to information which that person is entitled to by law.

7. You must not conduct yourself in a manner which could reasonably be regarded as bringing the Council into disrepute, or your position as a Member into disrepute.
8. You must not use your position as a Member improperly to obtain any advantage or disadvantage for yourself or any other person, or attempt to do so.
9. You must not take part in the scrutiny of any decision you have been involved in making – except that you may provide evidence or opinion to those undertaking any scrutiny process.
10. You must not accept any gift or hospitality which could reasonably be perceived as creating an obligation upon the Council, or upon yourself as a Member. If you do accept any gift or hospitality which might be attributable to your membership of the Council (other than the refreshments which might usually be expected at a Council meeting or civic function) you must disclose this, or any offer of such gift or hospitality, to the Monitoring Officer.
11. You must act in accordance with the Council's guidance or requirements when using the resources of the Council (such as officer time, IT and copying equipment, or physical materials), or when authorising others to use them, and must ensure that those resources are not used improperly for political or other purposes.
12. You must have regard to relevant advice given by the Council's Chief Financial Officer or Monitoring Officer when making decisions and must give reasons for those decisions, in accordance with any requirements imposed by statute or the Council.
13. You must comply with the following sections of this Code, which relate to registering and declaring in meetings certain interests you may have. This includes complying with any procedure rule adopted by the Council which requires Members to leave the room during any meeting at which a matter in which they have a disclosable pecuniary interest is being discussed.

INTERESTS

Disclosable Pecuniary Interests

14. (1) A pecuniary interest is a "disclosable pecuniary interest" in relation to you if it is of a description specified in regulations (and listed in Appendix 1) and either:
 - (a) it is your interest; or
 - (b) it is an interest of:
 - (i) your spouse or civil partner;

- (ii) a person with whom you are living as husband and wife; or
- (iii) a person with whom you are living as if you are civil partners;

and you are aware that that other person has the interest.

Disclosure of pecuniary interests on taking office

15. (1) You must, before the end of 28 days beginning with the day on which you become a member or co-opted member of the Council, notify the Monitoring Officer of any disclosable pecuniary interests which you have at the time when the notification is given.
- (2) Where you become a member or co-opted member as a result of re-election or re-appointment, sub-paragraph (1) applies only as regards disclosable pecuniary interests not entered in the Council's register when the notification is given.
- (3) Where you give a notification for the purposes of sub-paragraph (1), the Monitoring Officer is to cause the interests notified to be entered in the Council's Register of Members' Interests ("the Register") (whether or not they are disclosable pecuniary interests).
- (4) Subject to paragraph 17 (regarding sensitive interests), you must, within 28 days of becoming aware of any new disclosable pecuniary interest or change to any interest already registered, register details of that new interest or change by providing written notification to the Monitoring Officer.

Pecuniary interests in matters considered at meetings

16. (1) Sub-paragraphs (2) to (4) apply if you:
- (a) are present at a meeting of the Council or Executive, or of any committee, sub-committee, joint committee or joint sub-committee of the Council or Executive;
 - (b) have a disclosable pecuniary interest in any matter to be considered, or being considered, at the meeting; and
 - (c) are aware that the condition in paragraph (b) is met.
- (2) If the interest is not entered in the Council's Register, you must disclose the interest to the meeting, but this is subject to this Code's provisions on sensitive interests.

- (3) If the interest is not entered in the Council's Register and is not the subject of a pending notification, you must notify the Monitoring Officer of the interest before the end of 28 days beginning with the date of the disclosure.
- (4) You may not:
 - (a) participate, or participate further, in any discussion of the matter at the meeting; or
 - (b) participate in any vote, or further vote, taken on the matter at the meeting;

but this is subject to this Code's provisions on dispensations.

Pecuniary interests in matters considered by a single member

- (5) Sub-paragraphs (6) and (7) apply if:
 - (a) a function of a relevant authority may be discharged by a member of the authority acting alone;
 - (b) the member has a disclosable pecuniary interest in any matter to be dealt with, or being dealt with, by the member in the course of discharging that function, and
 - (c) the member is aware that the condition in paragraph (b) is met.
- (6) If the interest is not entered in the Council's Register and is not the subject of a pending notification, the member must notify the Monitoring Officer of the interest before the end of 28 days beginning with the date when the member becomes aware that the condition in sub-paragraph (5)(b) is met in relation to the matter.
- (7) The member must not take any steps, or any further steps, in relation to the matter (except for the purpose of enabling the matter to be dealt with otherwise than by the member).
- (8) Where you give a notification for the purposes of sub-paragraph (3) or (6), the Monitoring Officer is to cause the interest notified to be entered in the Register (whether or not it is a disclosable pecuniary interest).
- (9) The Council's Constitution provides for the exclusion of a member or co-opted member of the authority from a meeting while any discussion or vote takes place in which, as a result of the operation of sub-paragraph (4), the member or co-opted member may not participate.
- (10) An interest is "subject to a pending notification" if:

- (a) the interest has been notified to the Monitoring Officer, but
- (b) has not been entered in the Register in consequence of that notification.

Sensitive interests

- 17.(1) Sub-paragraphs (2) and (3) apply where:
- (a) you have an interest (whether or not a disclosable pecuniary interest); and
 - (b) the nature of the interest is such that you and the Monitoring Officer consider that disclosure of the details of the interest could lead to you, or a person connected with you, being subject to violence or intimidation.
- (2) If the interest is entered in the Register, copies of the Register that are made available for inspection, and any published version of the Register, must not include details of the interest (but may state that you have an interest the details of which are withheld under section 32(2) of the Localism Act 2011).
- (3) If paragraph 16(2) applies in relation to the interest, that provision is to be read as requiring you to disclose not the interest but merely the fact that you have a disclosable pecuniary interest in the matter concerned.

DISPENSATIONS FROM NON-PARTICIPATION

18. (1) The Council may, on a written request made to the Monitoring Officer by you, grant a dispensation (in accordance with the relevant statutory provisions) relieving you from either or both of the restrictions in paragraph 16(4) in cases described in the dispensation.
- (2) Paragraph 16(4) does not apply in relation to anything done for the purpose of deciding whether to grant a dispensation under this section.

OFFENCES

19. (1) You commit a criminal offence if, without reasonable excuse, you:-
- (a) fail to comply with an obligation imposed on you by paragraph 15(1) or 16(2), (3) or (6);

- (b) participate in any discussion or vote in contravention of paragraph 16(4); or
 - (c) take any steps in contravention of paragraph 16(7).
 - (2) You commit an offence if under paragraph 15(1) or 16(2), (3) or (6) you provide information that is false or misleading and you:
 - (a) know that the information is false or misleading; or
 - (b) are reckless as to whether the information is true and not misleading.
 - (3) A person who is guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
20. **If you are in any doubt as to your position under the Code of Conduct, please consult the Monitoring Officer.**

DISCLOSABLE PECUNIARY INTERESTS

The pecuniary interests which are specified in regulations as disclosable pecuniary interests are the interests specified in the second column of the Schedule below:

SCHEDULE

<i>Subject</i>	<i>Prescribed description</i>
Employment, office, trade, profession or vacation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
Contracts	Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority— (a) under which goods or services are to be provided or works are to be executed; and (b) which has not been fully discharged.
Land	Any beneficial interest in land which is within the area of the relevant authority.
Licences	Any licence (alone or jointly with others) to occupy land in the area of

the relevant authority for a month or longer.

Corporate tenancies

Any tenancy where (to M's knowledge)—

(a) the landlord is the relevant authority; and

(b) the tenant is a body in which the relevant person has a beneficial interest.

Securities

Any beneficial interest in securities of a body where—

(a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and

(b) either—

(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or

(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

For these purposes:-

“the Act” means the Localism Act 2011;

“body in which the relevant person has a beneficial interest” means a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest;

“director” includes a member of the committee of management of an industrial and provident society;

“land” excludes an easement, servitude, interest or right in or over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income;

“M” means a member of a relevant authority;

“member” includes a co-opted member (entitled to vote);

“relevant authority” means the authority of which M is a member;

“relevant period” means the period of 12 months ending with the day on which M gives a notification for the purposes of section 30(1) or section 31(7), as the case may be, of the Act (the corresponding provisions in this Code are paragraphs 15(1) and 16(6));

“relevant person” means M or any other person referred to in section 30(3)(b) of the Act (corresponding provision in this Code is paragraph 14(1)(b)), namely:

- M’s spouse or civil partner;
- a person with whom M is living as husband and wife; or
- a person with whom M is living as if they were civil partners;

“securities” means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

GENERAL PRINCIPLES OF PUBLIC LIFE

Selflessness

1. You should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

Honesty and Integrity

2. You should not behave improperly, should not place yourself in situations where your honesty and integrity may be questioned; and should on all occasions avoid the appearance of such behaviour.

Objectivity

3. You should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

Accountability

4. You should be accountable to the public for your actions and the manner in which you carry out your responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to your office.

Openness

5. You should be as open as possible about your actions and those of the County Council, and should be prepared to give reasons for those actions.

Personal Judgment

6. You may take account of the views of others, including your political group, but should reach your own conclusions on the issues before you and act in accordance with those conclusions.

Respect for Others

7. You should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. You should respect the impartiality and integrity of the authority's statutory officers, and its other employees.

Duty to Uphold the Law

8. You should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in you.

Stewardship

9. You should do whatever you are able to do, to ensure that the County Council uses its resources prudently and in accordance with the law.

Leadership

10. You should promote and support these principles by leadership, and by example, and should always act in a way that secures or preserves public confidence.