

ITEM 7 - LATE REPORT

NORTH YORKSHIRE COUNTY COUNCIL

STANDARDS COMMITTEE

15 April 2016

Standards Bulletin

1.0 PURPOSE OF REPORT

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

2.0 BACKGROUND

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

2.2 In adopting the ethical framework under the Localism Act 2011, the Council decided that the continued production of the Standards Bulletin would help to maintain the Council's statutory duty to promote and maintain high standards of conduct.

3.0 THE STANDARDS BULLETIN

3.1 The latest draft edition of the Bulletin is attached at **Appendix 1** to this report.

3.2 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 Members of the Council.

BARRY KHAN

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

Background Papers:

- The Localism Act 2011

County Hall
NORTHALLERTON

11 April 2016



North

Yorkshire County Council

Issue No: 29
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STANDARDS BULLETIN

INTRODUCTION

THE STANDARDS COMMITTEE

The Members of the Standards Committee:

- **County Councillor Andrew Goss**
- **County Councillor Helen Grant**
- **County Councillor David Jeffels** (Vice-Chair)
- **County Councillor Caroline Patmore** (Chair)
- **County Councillor Peter Sowray**

Also invited to meetings of the Committee are:

- **Mrs Hilary Gilbertson MBE**, Independent Person for Standards
- **Ms Louise Holroyd**, Independent Person for Standards

If in doubt, please seek advice from the following:

Barry Khan

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The Committee on Standards in Public Life is continuing to maintain 'a watching brief' of the standards regimes in local government and the changes resulting from The Localism Act 2011. The Committee has published further information on key issues, details of which are set out in the Bulletin.

Members will be kept informed of developments.

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

CAROLINE PATMORE **Chair of the Standards Committee**

IN THIS ISSUE:

- Committee on Standards in Public Life Online Guidance On Ethical Standards For Public Service Providers
- Law Commission Consultation On Misfeasance In Public Office
- CSPL - Tone from the Top Report
- National Audit Investigation – Officers' Gifts And Hospitality
- Interests' regime
- Members' Gifts and Hospitality
- Complaint statistics
- Standards cases

CSPL Online Guidance On Ethical Standards For Public Service Providers

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

The CSPL has published a guidance document "Ethical Standards for Providers of Public Services", which is available to download from:

<https://www.gov.uk/government/publications/online-guidance-on-ethical-standards-for-public-service-providers>

In June 2014 CSPL published a report on Ethical Standards for Providers of Public Services. The latest Guidance builds on the previous report, the aim being to provide "short practical guidance to both providers of public services in building and embedding ethical standards in an organisation, and to commissioners in setting ethical expectations for the delivery of public services as well as ensuring those standards are met."

Key highlights from the Guidance are:

- a) "High ethical standards are important for society as a whole. They are particularly important where public money is being spent on public services or public functions as commissioning and procurement decisions can have a major impact on the user's daily lives and their quality of life. When a provider fails to deliver to the standards expected, and particularly where the user may have no other choice, it may have profound consequences for the individual user and damage public trust more generally."
- b) Examples of measures which could be expected of, implemented and embedded by providers of public services and monitored and evaluated by commissioners to provide assurance of ethical standards:-
 - Evidence of leadership commitment to ethical standards

- Evidence of board and individual responsibility for ethical standards
- Evidence of internal control and accountability measures
- Evidence of establishing an ethical awareness and capability in recruitment, induction, progression, training and professional development
- Evidence of appraisal, promotion and reward procedures that take account of values and ethical behaviour
- Evidence of commissioner-provider and user-provider dialogue

Members will be kept informed of developments.

Law Commission Consultation On Misfeasance In Public Office

On 20 January 2016 the Law Commission opened a consultation on the law of misconduct in public office which has since closed. The Commission will publish a further consultation document on options for law reform in 2016, with a final report being published in 2017. The consultation paper and background documents are available on the Law Commission website at:

<http://www.lawcom.gov.uk/project/miscconduct-in-public-office/>

The Commission states that:

Our reform objectives are to decide whether the existing offence of misconduct in public office should be abolished, retained, restated or amended and to pursue whatever scheme of reform is decided upon.

The legal concepts involved in the offence of misconduct in public office are highly technical and complex and not easily accessible to non-lawyers. Furthermore there is often some confusion between what the law is and what it should be. The question of the appropriate boundaries of criminal liability for public officials is clearly a matter of broad public interest ...

Misconduct in public office is a common law offence: it is not defined in any statute. It carries a maximum

sentence of life imprisonment. The offence requires that: a public officer acting as such; wilfully neglects to perform his duty and/or wilfully misconducts himself; to such a degree as to amount to an abuse of the public's trust in the office holder; without reasonable excuse or justification.

Historically the offence held public officers to account for their misconduct, where there were no other adequate ways of doing so. Nowadays such misconduct will usually amount to another, narrower and better defined, criminal offence.

The offence is widely considered to be ill-defined and has been subject to recent criticism by the government, the Court of Appeal, the press and legal academics.

Statistics suggest that more people are being accused of misconduct in public office while fewer of those accusations lead to convictions. One possible reason is that the lack of clear definition of the offence renders it difficult to apply.

We have identified a number of problems with the offence:

- 1. "Public office" lacks clear definition yet is a critical element of the offence. This ambiguity generates significant difficulties in interpreting and applying the offence.*
- 2. The types of duty that may qualify someone to be a public office holder are ill-defined. Whether it is essential to prove a breach of those particular duties is also unclear from the case law.*
- 3. An "abuse of the public's trust" is crucial in acting as a threshold element of the offence, but is so vague that it is difficult for investigators, prosecutors and juries to apply.*
- 4. The fault element that must be proved for the offence differs depending on the circumstances.*

That is an unusual and unprincipled position.

- 5. Although "without reasonable excuse or justification" appears as an element of the offence, it is unclear whether it operates as a free standing defence or as a definitional element of the offence.*

Members will be kept informed of developments.

CSPL - Tone from the Top Report

The Committee on Standards in Public Life has published the 57 responses it has received from police forces, PCCs and Police and Crime Panels in response to its report into policing accountability: Tone from the top - leadership, ethics and accountability in policing. The responses are available to download in PDF format via the following hyperlink:

<https://www.gov.uk/government/news/committee-publishes-responses-to-tone-from-the-top-report>

"In its report, the Committee calls for greater energy and consistency to be applied to promoting high ethical standards and for a more robust set of checks and balances in the accountability structures of local policing."

Members will be kept informed of developments.

National Audit Investigation – Officers' Gifts And Hospitality

The National Audit Office ("NAO") has published the findings from its investigation into the acceptance of gifts and hospitality by government officials. A copy of its report is available to download, along with an executive summary and other documentation from its website:

<https://www.nao.org.uk/report/investigation-into-the-acceptance-of-gifts-and-hospitality/>

The NAO website explains that the report examines the rules and guidance for central government officials and published transparency data on the gifts and hospitality received by departmental board members,

directors-general and senior military officers between April 2012 and March 2015. The NAO also reviewed the gift and hospitality guidance and the gift and hospitality registers in three case study departments: the Department for Business, Innovation & Skills (BIS), HM Revenue & Customs (HMRC) and Defence, Equipment and Support (DE&S), a bespoke trading entity within the Ministry of Defence (MoD).

The website sets out the key findings of the investigation:

- **Accepting modest hospitality is sometimes justified.** Officials often need to engage with a range of external contacts in order to carry out their work efficiently and effectively.
 - **The Cabinet Office has a principles-based approach to guiding officials on whether they can accept gifts and hospitality.** The three principles are: purpose (in the interests of government); proportionality (not over-frequent, over-generous or disproportionate); and avoidance of conflict of interest.
 - **Rules and processes on gifts and hospitality could be more stringent.** The NAO found that policies and practices fell short of good practice in some respects.
 - **There are some weaknesses in controls over gifts and hospitality.** Departments should use a risk-based and proportionate approach, but the NAO found weaknesses in some areas, for example locating gift and hospitality registers and management oversight of trends and local practices across departmental groups.
 - **The publication of hospitality record of senior officials helps to promote public accountability.** Reporting started in 2009 and has become part of the transparency agenda.
 - **Some departments are not meeting the transparency requirements.** The Cabinet Office requires departments to report the hospitality accepted by board members and directors-generals and above ('senior officials') each quarter. Twelve out of 17 departments, including BIS and HMRC, have published this information for every quarter from April 2012 to March 2015.
- **The NAO estimates that senior officials in 17 departments accepted some £29,000 of gifts and hospitality in 2014-15.** Senior officials accepted gifts and hospitality 3,413 times between 2012-13 and 2014-15. The total number of reported cases of senior officials accepting gifts and hospitality ranged from 718 times in BIS to 20 times in DFID. Levels of hospitality are likely to reflect different rules and reporting requirements as well the different roles of departments.
 - **The NAO estimates that officials in the 3 case study departments accepted a total of over £150,000 of gifts and hospitality in 2014-15.** Although the total value of hospitality accepted may not be high, the reputational risks around accepting it can be substantial.
 - **Officials accept hospitality from many organisations and individuals.** Senior officials in the 17 departments reported accepting hospitality (most often dinner) from some 1,495 different organisations (or individuals) between 2012-13 and 2014 15. Frequent acceptance of hospitality from particular organisations is not necessarily wrong, but it does need to be in the proportion to the business relationship.
 - **While most cases of gifts and hospitality appear to be reasonable, the NAO found some examples where acceptance may not have been consistent with the Cabinet Office principles.** Most of the hospitality and many of the gifts accepted seem reasonable and consistent with the principles. However, in its review of the registers and transparency data, the NAO identified some concerns. These included: tickets to professional sports and cultural events, sometimes accompanied by a spouse and/or children; bottles of champagne; and iPads.

Interests' Regime

Members must register and disclose 'disclosable pecuniary interests' as set out in regulations and detailed in the Members' Code of Conduct, and membership of any trade unions or professional associations (as 'interests other than a disclosable pecuniary interests'), but generally no

wider, non-pecuniary, interests (eg membership of public and charitable bodies) unless a Member holds a position/office within the body for profit or gain.

A pecuniary interest is a disclosable pecuniary interest (“DPI”) if it is of a description specified in regulations ie

- Employment, office, trade, profession or vacation (for profit or gain)
- Sponsorship
- Contracts
- Land
- Licenses
- Corporate tenancies
- Securities

(please see the Code for the detailed descriptions <http://www.northyorks.gov.uk/article/23630/Councillors-code-of-conduct>)

AND either:

- (a) it is the Member’s interest or
- (b) an interest of—
 - the Member’s spouse or civil partner
 - a person with whom the Member is living as husband and wife, or
 - a person with whom the Member is living as if they were civil partners

AND the Member is aware of the interest.

A Member with a DPI may not participate in the discussion of, or vote on, Council business (unless a dispensation is granted) and must withdraw from the meeting room.

The Register of Members’ Interests is maintained by the Monitoring Officer and is available for public inspection in Rm 11, County Hall.

Electronic copies of Members’ interests forms (redacted to remove signatures) are also published on the Council’s website (as required by the Localism Act 2011) at:

<http://www.northyorks.gov.uk/article/23651/Councillors---declaration-of-interest>

Members must, within 28 days of becoming aware of a new interest or a change to an existing interest, register the necessary details by

providing written notification to the Monitoring Officer.

PLEASE NOTE: a Member commits a **criminal offence** if, without reasonable excuse, s/he —

- fails to:
 - ❖ register disclosable pecuniary interests
 - ❖ disclose an interest to a meeting where required
 - ❖ notify the Monitoring Officer of an interest disclosed to a meeting
- participates in any discussion or vote where prohibited
- an individual Member decision taker takes any steps in relation to a matter where prohibited

A Member also commits a **criminal offence** if, in relation to the registration/disclosure of interests, s/he provides information that is false or misleading and —

- knows that the information is false or misleading, or
- is reckless as to whether the information is true and not misleading.

A court may also disqualify the person, for a period not exceeding five years, for being or becoming (by election or otherwise) a member or co-opted member of the relevant authority in question or any other relevant authority.

Please therefore keep your interests form under review to ensure it is up to date. Should you wish to amend your interests form, please contact Julie Robinson on ext 2953 to make the necessary arrangements or call in to Room 11 in County Hall, Northallerton.

Please do not hesitate to contact the Monitoring Officer or any of his team should you have any queries.

Members’ Gifts and Hospitality

Although gifts and hospitality offered and declined or received are no longer required to be registered in the Register of Members’ Interests, Members do still need to register them with the Monitoring Officer, by completing the appropriate form and returning it to the Monitoring Officer.

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 his team.

Complaint Statistics

For the year 1 April 2015 – 31 March 2016, the Council has received four complaints that a Member may have breached the Members' Code of Conduct.

One complaint concerned alleged defamatory comments about the complainant made by the subject Member at a parish council meeting. The matter was resolved informally by the subject Member providing a written apology to the complainant.

Of the other three complaints, one concerns a persistent complainant and is being dealt with via informal resolution. The other two are currently being scheduled for assessment by the Monitoring Officer.

Members will be kept informed of statistical information in relation to standards complaints received by the Authority.

CASES

Wiltshire Council

The Local Government Lawyer publication recently published a report on the following case:

A High Court judge recently quashed an outline planning permission on the ground that there was an appearance of bias on the part of a planning committee Member.

The councillor in question was a remunerated director (£3,000 pa) of a housing association which had an interest in the affordable housing part of the proposed development.

The judge held that the Member, in his capacity as director of the housing association, displayed the appearance of bias by involving himself in the planning application meeting.

The judge did not find that the Member had a discloseable pecuniary interest under the Members' Code of Conduct: the housing

association was not the applicant for the planning permission and, at the time of the application, had no formal contract with the developers.

The judge believed that a reasonable and fair-minded observer, with knowledge of all of the facts, would have been aware that the housing association had committed time, resources and expertise to working with the developers over the design of the affordable housing part of the scheme. Those circumstances alone were not enough to distinguish the case from the majority of housing applications likely to be dealt with by the committee. The key point was that in the context of the time, resources and expertise committed, the housing association was in a superior position to that of any other interested providers. As a result, the subject Member's private interests, as a director of the association, were engaged and it was wrong for him to have participated in the meeting.

Interests' issues are ultimately Members' responsibility. If you are in any doubt as to your position, please contact the Monitoring Officer or any of his team in order to discuss the situation.

Contributors:

MOIRA BEIGHTON
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Resources

Localism Act 2011 and subordinate legislation.
www.gov.uk/government/organisations/the-committee-on-standards-in-public-life
Information published on www.gov.uk
Local Government Lawyer case reports