

NORTH YORKSHIRE COUNTY COUNCIL

STANDARDS COMMITTEE

10 March 2017

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

16 February 2017



North

Yorkshire County Council

STANDARDS BULLETIN

INTRODUCTION

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.

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

THE STANDARDS COMMITTEE

The Members of the Standards Committee:

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

Also invited to meetings of the Committee are:

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

If in doubt, please seek advice from the following:

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CSPL Review of Ethics for Regulators

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. It advises the Prime Minister on national ethical standards issues.

The CSPL has finished its review of ethics for regulators and, in September last year, it published its report "Striking the Balance - Upholding the Seven Principles of Public Life in Regulation":

<https://www.gov.uk/government/publications/striking-the-balance-upholding-the-7-principles-in-regulation>

The CSPL states that it is reassured that, generally, regulators are committed to upholding the Principles however there are instances where this is not the case and retrospective action is being taken to deal with issues as they emerge. The CSPL welcomes good practice but in the report warns against complacency. In particular, the CSPL felt more could be done to maintain integrity through strengthening the appearance of independence and avoiding conflicts of interest.

The report makes a series of best practice recommendations to ensure fairness and integrity in processes and also recommendations to Government, all to increase public trust in UK regulation.

Key highlights from the report are as follows:

- a) *...regulation plays a key role in public life ... a regulatory body should conduct itself in ways which are – and are seen to be – ethically acceptable. This is an important aspect of its overall effectiveness.*
- b) *The commonality shared by all regulators is the need to maintain their integrity through independence – both from government and those they regulate – avoiding undue influence and ensuring the decisions they make are fair, well-reasoned and evidence-based. It is a complex space to negotiate and a difficult path to tread.*
- c) *In light of the result of the June 2016 referendum in which the British people*

voted to leave the European Union (EU), the UK's regulatory landscape is likely to be substantially restructured in the coming years. ... domestic regulatory bodies are likely to become all the more important as the UK withdraws from the EU's legal framework. In this context, the Committee believes that maintaining the highest ethical standards within regulatory bodies continues to be of the utmost importance.

- d) *During the course of the review, however, we came across variances in ethical standards which cause us some concern. Recognising the breadth and range of regulatory bodies, we do not envisage a 'one size fits all' approach. But across all regulators, we believe strongly that the adoption of good practice identified by the Committee would enhance ethical standards of regulators which, in turn, would have a significant impact on regulatory effectiveness*
- e) *The Committee has grouped this best practice into six key areas, so that all regulatory bodies can check the approach of their own organisation to the ethical standards they should be upholding*

The best practice recommendations made in the report relate to the following areas and examples are set out below:

Governance

- The regulatory board is responsible for providing leadership and setting standards on ethical behaviour within the organisation. The board should seek regular evidence-based assurance that the highest ethical standards are being upheld.
- Non-executive and lay members of boards have an important role to play in ensuring that the regulatory body is beyond reproach in following the Principles of Public Life. All board members have a responsibility to ensure that adequate discussion of issues occurs before decisions are made.
- Corporate governance arrangements should have proactive governance arrangements to minimise the risk of conflicts of interest and individuals acting for private gain.

- Compliance with standards of conduct should be confirmed in the published annual certification by accounting officers. Regular, published information should include up-to-date registers of meetings, conflicts of interest and gifts and hospitality. These should be publicly accessible.

Code of Conduct

- At least one code of conduct should cover all personnel, including board members, employees, secondees, consultants, and contractors.
- The code should reflect the ethical risks faced by the body.
- The standards established in the code of conduct should be evident in the recruitment and appraisal processes and in their induction and regular training.

Revolving door

- Policies and procedures should be in place to manage 'revolving door' situations at all levels of the organisation where individuals come from, or go to, the regulated sector.
- At every board meeting, members should be asked to declare any actual or potential conflict of interest and these should be publicly recorded. Where the board agrees that a conflict is inappropriate, the member should be recused from both the discussion and decision making.
- Particular care should be taken where non-executive board members have a live, concurrent post which could give rise to conflicts of interest. Any conflict of interest for non-executives should be established at the start of the selection process and actively managed to ensure there are no material factors impeding independence of judgement.

Independence

- The operational independence of regulators must be upheld. Ministerial guidance on operational aspects may be transparently considered, but should not be treated as binding, unless there are statutory provisions for such guidance.
- Ministerial appointments to regulatory bodies must be timely, transparent, on

merit, without patronage and with proper regard to the needs of the organisation.

- Regulators should ensure that staff at all levels are clearly aware of conflicts of interest and are explicitly advised about the risks of bias in decision-making.
- Regulatory bodies should demonstrate that funding mechanisms do not have an impact on their independence and integrity

Transparency

- Regulators should publish and update their corporate governance documents. These should include minutes of meetings, registers of interests, annual reports, their rules and guidance and their decision making processes.
- Any body with regulatory functions not designated a 'public authority' under the Freedom of Information Act 2000, should have a publication scheme in line with the best practice established by the Information Commissioner's Office.

External leadership

- Regulators should actively engage with those they regulate and take a leadership role by encouraging positive attitudes towards compliance.
- Such promotion of an ethical approach to compliance would be supported by a suitable amendment to the Regulators' Code.

The Standards Committee has considered the Council's approach to the ethical standards it should be upholding. It believes that the Council maintains a strong ethical framework, shaped by its Code of Conduct and accompanying standards documents, underpinned by support from the Council's leadership.

Councillor Commission Report

The Councillor Commission, run by De Montfort University's Local Government Research Unit, in partnership with The Municipal Journal, is undertaking an independent review of the role and work of councillors through discussions and interviews with, and submissions from, councillors throughout the country.

Interests' Regime

In October, the Commission published an Interim report:

<http://www.dmu.ac.uk/documents/business-and-law-documents/cc-interim-report-oct-16-final-3.pdf>

Some of the results referred to in the report are:

- the increasing workload and time commitments that their duties demand. It is difficult for councillors to sustain their roles in conjunction with working full time and this could be a deterrent to younger people to stand for election.
- Non-executive councillors feel distanced from policy making.
- There are also frustrations over councillor access to information.
- Councillors experience frustration by expectations of constituents and the media and the lack of understanding of what councillors can actually achieve in their role.
- A new and developing feature of the role of the councillor is the increasing need with which they are required to interact in complex networks of organisations beyond the council as well as the changing face of service delivery at the local level.
- Councillors make considerable personal sacrifices in serving local people.

The Commission's final report will be presented to Government.

More information is available on the Unit's website:

<http://www.dmu.ac.uk/research/research-news/2016/january/overworked-underpaid-and-unpopular-%E2%80%93-why-would-anyone-be-a-councillor-most-comprehensive-ever-review-aims-to-find-out.aspx>

Members will be kept informed of developments.

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.

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.

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 2016 to date, the Council has received two complaints that a Member may have breached the Members' Code of Conduct.

One complaint is currently under consideration by the Monitoring Officer.

The other complaint is currently being scheduled for assessment by the Monitoring Officer in consultation with the Independent Person for Standards.

Further details will be reported in due course.

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

CASES

1. A former councillor was convicted of housing fraud (failure to disclose information and notify a change in circumstances) and received a 22 week custodial sentence. He was disqualified from being a councillor under the provisions of the Local Government Act 1972.

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

A town councillor (X) made a standards complaint against another councillor, in respect of which it was resolved that no action should be taken.

X then requested a copy of the subject member's response to his complaint and later

also requested copies of the evidence supplied by the subject member.

The authority refused to disclose the information, relying on the exemption provided under section 41 of the Freedom of Information Act (information provided in confidence).

X appealed to the Information Commissioner (ICO). The authority also then sought to rely on the exemptions provided in FOIA section 21 (information accessible by other means) and section 40(2) (personal information).

The Information Commissioner concluded that the authority had correctly relied on sections 21 and 40(2) as disclosure of the information would be unfair and therefore in breach of the first Data Protection Principle:

- there was a general expectation of privacy for conduct investigations;
- there was a legitimate expectation of privacy;
- disclosure would cause unwarranted damage or distress to the councillor; and
- it was not within the remit of the ICO to consider the merits of the complaint.

X unsuccessfully appealed to the First Tier Tribunal. The FTT agreed that section 40(2) was appropriately engaged and relied on to refuse disclosure of the information:

- The requested information was clearly personal data.
- Even though the material related to the individual's work rather than personal activities, it related to a complaint made against the councillor's behaviour and the council considered whether the behaviour contravened its code of conduct. As such, the information was clearly personal in nature, "in the same way that an individual's annual appraisal report can be considered to be personal data".
- Disclosure was unwarranted. "Notwithstanding that the councillor held a public office and the withheld information related to the councillor's public function

rather than private life, we accept that information relating to complaints against individuals carries a very strong general expectation of privacy. This is due to the likelihood that disclosure could cause the individual distress and potential damage to future prospects and general reputation."

- The FTT accepted that the councillor would have had a legitimate expectation of privacy based on the Tribunal's finding that material provided in relation to an investigation into conduct is "inherently highly personal in nature and the councillor's rights and interests in the privacy of his data need to be respected".
- It was not relevant that neither the requester nor the councillor were no longer in office, "since they might seek to be in future".
- The councillor had a legitimate interest and right to have his personal data withheld from the public because the subject matters attracted a right to privacy.
- The collective weight of interest in disclosure was "vastly outweighed by the councillor's rights and freedoms or legitimate interest in...not disclosing to the world at large material related to a complaint about his conduct where the council did not find the complaint to be merited".

Interestingly, a further standards related FOI case has been reported:

North Norfolk District Council

This First Tier Tribunal (Information Rights) case required the authority to disclose a draft standards investigation report arising from a councillor's alleged breach of code of conduct.

The authority had previously relied on the section 40 (personal information) exemption for non-disclosure of the requested information.

The report was submitted to the authority in a "(draft) final" version, but the councillor left office

and so the standards committee never considered the draft report.

The FTT held that the authority could not rely on the section 40 exemption for the following reasons:

- there was a strong public interest in awareness of the finding in view of the elected status of the councillor
- the final report would not be published if disclosure was not ordered;
- not disclosing the report would encourage suspicions that a breach had been found, irrespective of whether that was accurate.
- any differences between the draft and final versions of the report could only be minimal.

The FTT concluded that disclosure was in the public interest, which was powerful and legitimate.

This case conflicts with recent cases and indeed a similar case in this authority whereby our reliance on section 40(2) (personal information) and section 41 (information provided in confidence) for non-disclosure of an investigation report were upheld by the ICO and subsequently the FTT.

In our case and previous ones, the very strong expectation of privacy in disciplinary/complaints matters was given more weight notwithstanding a councillor's elected role than in this new case.

Honiton Town Council

A councillor was found to have breached the Town Council's Code of Conduct requirements to treat others with courtesy and respect and sanctions were imposed.

On 2 March, the councillor took judicial review proceedings against the council despite the sanctions having been removed on 1 March, as at least one was unlawful. On 19 March the council wrote to the councillor confirming it was not imposing all the sanctions save for censure and offering to pay the councillor's costs. The councillor indicated his intention to continue the proceedings as he believed it was not lawful to revoke the sanctions and he felt no sanctions were appropriate.

The Court issued a quashing order due to the unlawful sanction(s) but dismissed the rest of the claim.

The case clarified that:

- sections 27 and 28 Localism Act 2011 place a duty on principal councils to investigate and determine allegations of breaches of the Code;
- a sanction for a subject member to undergo training was lawful.

In relation to costs, the council was ordered to pay the councillor's costs up to and including 19 March. The councillor was ordered to pay the council's costs after that date, as the letter of 19 March resolved any doubt and after that the councillor's continuation of the case was unreasonable.

Rotherham Borough Council

A councillor was convicted of sexual assault, after he squeezed the bottom of a female councillor at a council event. He received a community order and a six month curfew and was also made subject to a restraining order.

The Judge accepted the one off nature of the incident and the councillor was therefore not required to sign the sex offenders' register.

The councillor was also ordered to pay £500 towards costs and an £85 victim surcharge.

He resigned his council seat.

Contributors:

MOIRA BEIGHTON
North Yorkshire Legal & Democratic Services

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