

NORTH HERTFORDSHIRE DISTRICT COUNCIL

STANDARDS COMMITTEE

MINUTES

**Meeting held at the Council Offices, Gernon Road, Letchworth Garden City
on Tuesday, 16 September 2008 at 7.30p.m.**

PRESENT: *Mr N. Moss (Independent Chairman) and Mr P. Chapman (Independent Vice-Chairman).
Parish Councillors M. Goddard and R. Wornham and District Councillors A. Bardett, S. Bloxham, M.R.M. Muir and L.W. Oliver.*

IN ATTENDANCE: *Corporate Legal Manager (Deputy Monitoring Officer) and Senior Committee and Member Services Officer.*

1. APOLOGIES FOR ABSENCE

Apologies for absence were submitted on behalf of District Councillors Judi Billing, Lee Downie and Bernard Lovewell.

2. MINUTES

RESOLVED: That the Minutes of the meeting of the Committee held on 29 July 2008 be approved as a true record of the proceedings and signed by the Chairman, subject to the addition in brackets after the list of Apologies for Absence of the words "not required".

In respect of Minute 5, and in relation to a question regarding the Committee's sanction of training for Parish Councillor Beavis, it was confirmed that the Committee had no authority to ensure such training was carried out, as it was expected that this would be arranged by the Parish Council. The Deputy Monitoring Officer commented that it was her intention to instigate a programme of continual training on standards issues, and that she hoped to bring pressure to bear on Parish Councils to participate fully in this process, in partnership with the Hertfordshire Association of Local Councils (HALC).

3. NOTIFICATION OF OTHER BUSINESS

No other items were presented for consideration.

4. CHAIRMAN'S ANNOUNCEMENTS

The Chairman reminded Members that, in line with the Code of Conduct, any Declarations of Interest now needed to be declared immediately prior to the item in question. It was noted later in the meeting that the wording of this item would need revision. The current code of conduct allowed any Member declaring a personal prejudicial interest to speak on such a matter before leaving the room.

5. UPDATE ON INTRODUCTION OF THE NEW REFERRALS PROCESS (APPOINTMENT OF PARISH MEMBERS TO THE STANDARDS COMMITTEE)

The Deputy Monitoring Officer submitted a report advising Members of the progress made to introduce the local referrals process, seeking the appointment of an additional town/parish Council members to the Standards Committee, and advising of the proposed appointment of two further Independent Members to assist in planning the timetable for the Assessment and Review Sub-Committees.

In respect of the new local referrals process, the Chairman and Deputy Monitoring Officer had met with the editor of the Comet Newspaper to explain the changes to the process for complaints about Members' conduct. It had been agreed that the Comet would offer some publicity surrounding the changes when the relevant changes were made to the Council's web-site. The Deputy Monitoring Officer had been liaising with the Council's IT team to publish details of the new scheme on the website. This had meant a review of the existing web page detailing 'How to complain about a Councillor' and the drafting of a new on-line complaint form - extracts from the draft web pages were attached at Appendix 2 to the report. It had been agreed to publicise the new complaints system on or around 1 October 2008.

The Deputy Monitoring Officer advised that she was working towards development of a 'Governance' area on the website which would collect together the various functions of the Monitoring Officer e.g. confidential reporting (whistleblowing), and certain audit functions (anti-fraud).

In relation to the appointment of additional Independent Members to the Standards Committee, it was noted that, under the Council's Constitution, applicants for these positions were required to be interviewed by the Appointments, Investigations and Disciplinary Committee, who would make a recommendation for appointment to Council. Three application forms had been returned for the two vacant independent posts, and interviews were to be carried out on 17 September 2008. The recommendation to Council would be made to its meeting on 25 September 2008.

With regard to the recruitment of two additional Parish/Town Councillors, the Deputy Monitoring Officer reported that, on 25 July 2008, the Council had written to the parish clerks of each Town/Parish Council in the District inviting them to nominate Members to serve on the Standards Committee. Three applications had been made from Members of Royston Town Council, Codicote Parish Council and Letchworth Garden City Town Council.

It was noted that, under Article 4 of the Council's Constitution, the Council was responsible for appointing members of all Committees, which included town/parish members appointed to the Standards Committee. It was reported to the last meeting of the Committee that the Council may 'adopt whatever procedures it thinks fit' for the appointment of town/parish council members. Whilst the Constitution did contain provisions for the appointment of independent members, it contained no such provisions for Standards Committee or (any other Committee) to recommend parish candidates to Council for appointment, nor provision for selection of candidates where the number applying for appointment exceeded the number of vacancies.

The Deputy Monitoring Officer therefore proposed an amendment to the Constitution to enable the Standards Committee to select and recommend town/parish members for these, and future appointments, to the Standards Committee. The amendment was recommended as follows:

"9. To make appropriate arrangements for the selection of town/parish members and to make recommendations to the Council for appointment of a selected town or parish member to the Standards Committee"

The Deputy Monitoring Officer explained that, if the Standards Committee was agreeable to the above amendment, it was therefore for the Standards Committee to select two town/parish members from the three applicants detailed in Appendix 1 to the report.

Members agreed that it would be appropriate for the Standards Committee to be involved in the selection process, and to make recommendations to Council accordingly. The Committee therefore supported the above addition to its Terms of Reference.

The Committee noted that there were several options for the appropriate means of selection:

- (i) the applicants were interviewed by the Standards Committee (with the Chairman taking the lead). If this option was chosen, a further meeting would be arranged and the applicants invited to attend;
- (ii) the town/parish members were selected on written application according to a ballot;
- (iii) members were selected on written application according to the town/parish split. The Standards Committee currently comprised two parish members and therefore the town council members should be selected;
- (iv) town/parish members were selected on written application to ensure the greatest geographical coverage of the District. If this option were chosen the Letchworth and Codicote members would be selected, as current members covered the east and west of the District.

The Deputy Monitoring Officer explained that Independent Members of the Standards Committee were to be appointed for a term of 3 years. It was recommended that town/parish members were also appointed for a term of 3 years, subject to them remaining in office during that period. Further appointments to the Standards Committee of town and parish members would occur at the end of three years or on the earlier loss of office by, or the retirement of, that member.

The Committee debated the four suggestions made by the Deputy Monitoring Officer and agreed that to allow appointments to be made promptly it would, on this occasion, be advantageous to recommend two nominees to Council for approval. However, the Committee agreed that, on all future occasions when town/parish Council vacancies occurred, an interview selection process should be used.

The Committee recognised that much of North Hertfordshire was covered by rural parishes, and hence recommended that the Codicote Parish Council nominee be appointed. However, the Committee considered that it would be appropriate for one of the larger-populated parishes to be represented. Accordingly, and following a vote upon the remaining nominees, the Committee recommended that the Letchworth Garden City Town Council nominee be appointed.

RECOMMENDED TO COUNCIL:

(1) That the Terms of Reference of the Standards Committee be amended, with the following addition:

“9. To make appropriate arrangements for the selection of town/parish members and to make recommendations to the Council for appointment of a selected town or parish member to the Standards Committee.”;

(2) That Parish Councillor Bryan Hillan of Codicote Parish Council and Town Councillor Chris Harlow of Letchworth Garden City Town Council be appointed to the two Town/Parish Council vacancies on the Standards Committee, the term of office for both councillors to be three years, subject to them remaining in office during that period..

RESOLVED: That, on all future occasions when town/parish Council vacancies occurred on the Committee, an interview selection process should be used.

REASON FOR DECISION: To ensure an appropriate number of town/parish members of the Standards Committee to meet the requirements of the Standards Committee (England) Regulations 2008.

6. WHISTLEBLOWING POLICY (ALSO KNOWN AS THE COUNCIL'S CONFIDENTIAL REPORTING CODE)

The Deputy Monitoring Officer submitted a report regarding proposed amendments to the Council's Confidential Reporting Code. She reminded Members that this Code was a policy which fell within the jurisdiction of the Standards Committee, as well as Human Resources. It played an important part in meeting the Council's commitment to openness, honesty and ethical propriety, as set out in the Anti-Fraud and Corruption Policy

The Deputy Monitoring Officer recommended that the Confidential Reporting Code should be separated out into an HR policy for internal complaints by employees, and a separate policy for reports made by external contractors and members of the public. These documents were attached to the report as Appendices 1 and 2, respectively.

It was noted that the current Confidential Reporting Policy attempted to cover reports of fraud or malpractice by employees, members of the public and external contractors. This could make the policy rather confusing for members of the public as it referred to other employment policies which could be relied upon to deal with, for example, victimisation arising from the disclosure. This would not apply to non-employees.

The main changes to the Confidential Reporting Code were:

- To make the employment policy relevant to employees only and separate out the wider remit of confidential reporting into a separate Code dealing with reports by members of the public concerned about Council activities;
- To make employees and the public aware of the confidential reporting mailbox which was being set up for the Monitoring Officer to receive complaints under the Confidential Reporting Code;
- To include a reference to the recently adopted Anti-Fraud and Corruption Policy.

It was considered that a Monitoring Officer mailbox would also be a useful means of receiving reports under the Confidential Reporting Code. This should help to reinforce the Council's

commitment in the Anti-Fraud and Corruption Policy to dealing with all concerns about unethical or unlawful conduct in a discreet and confidential manner.

The Deputy Monitoring Officer re-iterated the fact that the Confidential Reporting Code for the public would form part of the new 'Governance' area which was being created on the Council's website. It was recognised, however, that the Deputy Monitoring Officer would have to work together with the Audit Manager to produce protocols so that complaints could be dealt with effectively and inspire confidence in the process. These protocols would be brought to a future meeting of the Standards Committee for approval.

The Committee debated the internal Code set out in Appendix 1 to the report, and made the following amendments:

- Page 1 – penultimate paragraph – the fourth bullet point “conduct which is an offence or a breach of law” should be amended to remove the words “an offence or”;
- Page 3 – “How to Raise a Concern” – first paragraph – to be re-worded to make it clearer what the first step should be should a member of staff wish to raise a concern;
- Page 3 – “How to Raise a Concern” – fourth paragraph – clarification that the Chairman of the Standards Committee is an Independent Co-opted Member of the Council, and whether a member of staff's approach to him/her would be in a formal or informal capacity;
- Page 4 – “Untrue Allegations” – the whole of this paragraph to be moved to nearer the beginning of the document;
- Page 4 – “How the Council Will Respond” – second paragraph – clarification that the “public interest” test referred to in the fifth line was a formal (not arbitrary) test, and the addition of a brief description of the public interest test.

The Committee agreed that the relevant sections of the external Code set out in Appendix 2 to the report should be amended in line with the amendments agreed to the internal Code.

RESOLVED:

- (1) That the amended internal employment policy for Confidential Reporting, as attached at Appendix 1 to the report, and as amended, be approved;
- (2) That the Confidential reporting Code for external contractors and members of the public, as attached at Appendix 2 to the report, and as amended, be approved and published on the Council's website at the earliest opportunity;
- (3) That the Deputy Monitoring Officer work with the Audit Manager to produce protocols for the processing of confidential reports, and that such protocols be referred to a future meeting of the Committee for approval.

REASON FOR DECISION: To ensure that the Council has effective means of tackling allegations of fraud or any other form of corruption made by a member of members of staff.

7. INSURANCE AND INDEMNITY ARRANGEMENTS FOR INDEPENDENT MEMBERS

The Deputy Monitoring Officer submitted a report regarding insurance cover and indemnity arrangements for Independent Members of the Standards Committee.

The Deputy Monitoring Officer advised that Members and officers had a statutory indemnity for any personal liability they may incur whilst carrying out the business of the authority. Section 265 of the Public Health Act 1875 stated that:

“No matter or thing done...by any Member...of by any officer of such authority or other person whomsoever acting under the direction of the authority shall if the matter or thing were done ...bona fide... subject them or any of them personally to any action liability claim or demand whatsoever...”

The Deputy Monitoring Officer explained that there were a number of other minor statutes which offered similar protection relating to specific functions of the Council. The Council's

Insurance Officer had confirmed that the policy currently held offered an indemnity for 'any voluntary worker or any person co-opted to assist the Council to carry out its work.' The Insurance Officer had confirmed that this included Independent Members of the Standards Committee, who are co-opted Members of the Council.

The Committee noted that individual Members of local authorities were not personally liable for the actions of the Council as a body corporate. The view was sometimes expressed that, if a Council expressly authorised an act which was beyond its powers (*ultra vires*) and the Members who authorised it acted wilfully, knowing it to be unlawful, or maliciously, then personal liability may be incurred. Similarly, Members who acted fraudulently would probably be personally liable for their acts. However Members, including co-opted Members, acting in the ordinary course of business in good faith, would be able to rely upon the indemnity and insurance arrangements put in place by the Council.

RESOLVED:

- (1) That the arrangements for insurance and indemnity of the actions of Members of the Standards Committee be noted;
- (2) That the Independent Members of the Standards Committee be advised on an annual basis that the insurance arrangements in place by the Council are sufficient to cover their participation in the governance arrangements of the Council.

REASON FOR DECISION: To ensure that the Independent Members can continue to act in the best interests of the Council, and are not exposed to any personal liability when acting properly in the course of the Council's business.

8. PLANNING CODE OF GOOD PRACTICE

The Deputy Monitoring Officer submitted a report in respect of a recent review of the Planning Code of Good Practice.

The Deputy Monitoring Officer commented that the Government's series of reforms to the planning system in 2004 had led to the commissioning of a study (known as the Arup Study) into whether Member involvement in the planning process had an impact on the speed of the process and the extent to which Member decisions accorded with officer decisions. One of the suggestions of the Arup report was that perhaps a shift in attitude was required amongst Monitoring Officers who encouraged an 'over cautious approach' so that Members could feel confident to allow a limited amount of pre-application involvement. The response to this from the Association of County Secretaries and Solicitors (ACSeS) stated that the Arup study had failed to take into account the public law issues of bias and pre-determination which stood outside of the Code of Conduct. Claims of bias and pre-determination were challenged through judicial review proceedings, which could bring the validity of the planning decision into question and which potentially had serious consequences for councils.

The Deputy Monitoring Officer explained that, following the ACSeS response, representatives from the Department of Communities and Local Government and Local Government Association met to agree a mutually accepted position on the advice to be given to councillors. A recent paper entitled 'Positive Engagement – a Guide for Planning Councillors' was updated in July 2008 and endorsed by ACSeS, the Standards Board for England, the Planning Officers Society and the Planning Advisory Service. The Guide was attached at Appendix 1 to the report.

The Committee noted that the Guide was very short and comprised a list of "do-'s and don'ts". In brief, the rules were that Members should:

- always preface any discussions with disclaimers, keep a note of meetings and calls and make clear at the outset that discussions were not binding on the member or the planning committee. Members must have and be seen to have an open mind at the point of making their decision;
- recognise the distinction between giving advice on the process and negotiating on the application;
- recognise that they can lobby and campaign, but that this would probably remove them from the decision making process.

The Deputy Monitoring Officer stated that one of the principal points that all parties were agreed upon was that Members should only seek to engage in discussions prior to the planning application having been considered. Whilst this was very sensible advice where developers were involved (where pre-application discussions were normal), this was unlikely to be the case for householder applications. As a result, it was recommended to propose a Code of Conduct which did not discourage Members from engaging with their constituents after a householder application had been made, although the same rules would still apply.

The Deputy Monitoring Officer advised that an amended NHDC Code of Good Practice had therefore been prepared, and was attached at Appendix 2 to the report. This was a much simplified version of the current Code of Good Practice. As a result of the Guide for Planning Councillors, ACSeS had agreed to look again at the model Code of Good Practice and it was likely that further amendments to the Code might be expected. These would be dealt with as part of the next annual Constitution Review in February – April 2009.

The Committee commended the Deputy Monitoring Officer for a much simplified version of the Code of Good Practice. The one amendment recommended by the Committee was the re-wording of the third paragraph of the section of the Code headed "Prejudicial interests for members not on the Planning Control Committee" as follows:

"You are not prevented from making an objection to a proposal or explaining and justifying a proposal in which you have a prejudicial interest to an appropriate officer in writing, in the way a private individual would".

RECOMMENDED TO COUNCIL: That the proposed Planning Code of Good Practice, as attached at Appendix 2 to the report, as amended, be adopted.

REASON FOR DECISION: To minimise the risk of legitimate and successful challenge to planning decisions.

9. UPDATE ON DECLARATIONS OF OFFICE

The Chairman announced that this item had been withdrawn from the agenda, and that the matter would be considered at the next meeting of the Committee in December 2008. This would include a schedule, currently in the process of preparation, indicating the training attended by Parish Councils and District Councillors and the position with regard to signing of Declarations of Acceptance of Office and Financial Interest Forms.

10. REVIEW OF HEARINGS AND FORTHCOMING MATTERS

The Chairman announced that this item had been withdrawn from the agenda. The Deputy Monitoring Officer commented that items for the December 2008 meeting of the Committee would include reports on a number of outstanding matters in respect of the Local Referrals Scheme; posts which were Politically Restricted; and suggestions for the Committee to discuss the possible adoption of a schedule of items to be considered on a regular basis.

11. DATE OF NEXT MEETING

The Chairman advised that he had received a request from a fellow Member of the Committee for the date of the next meeting, scheduled for Wednesday, 17 December 2008, to be changed.

Following a brief debate, it was

RESOLVED: That the next scheduled meeting of the Standards Committee be changed, to now take place at 7.30pm on Monday, 15 December 2008 in the Council Chamber, NHDC Offices, Gernon Road, Letchworth Garden City.

The meeting closed at 9.25pm.

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Chairman