

**NORTH HERTFORDSHIRE DISTRICT COUNCIL**

**STANDARDS COMMITTEE**

**MINUTES**

**Meeting held at the Council Offices, Gernon Road, Letchworth Garden City  
on Monday, 15 December 2008 at 7.30p.m.**

**PRESENT:** *Mr N. Moss (Independent Chairman), Mr P. Chapman (Independent Vice-Chairman), Mr S. Gillies and Mr P. Joester.  
Town Councillor C. Harlow and Parish Councillors M. Goddard and B. Hillan.  
District Councillors A. Bardett, Judi Billing, S. Bloxham, David Kearns, Bernard Lovewell, 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 Councillor Lee Downie and Parish Councillor R. Wornham.

The Chairman welcomed those Independent and Parish Members who were attending their first meeting of the Committee following their recent appointment, namely Mr S. Gillies, Mr P. Joester, Town Councillor C. Harlow and Parish Councillor B. Hillan. In a short address, the Chairman advised that, in broad terms, the Standards Committee had two primary functions, as follows:

- (1) To ensure compliance with the Code of Conduct for District Council and Parish Council Members, and to deal appropriately with any complaints made to the Committee alleging breaches of the Code by these Members;
- (2) To ensure that the North Hertfordshire Standards Committee upheld and promoted the highest possible level of ethical standards.

The Chairman commented that, whilst the District Council Members on the Committee were nominated by the various political groups on the Council, those Members put aside party politics when dealing with matters relating to the Standards Committee.

**2. MINUTES**

**RESOLVED:** That the Minutes of the meeting of the Committee held on 16 September 2008 be approved as a true record of the proceedings and signed by the Chairman.

**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.

**5. CODE OF CONDUCT UNDERTAKING, REGISTER OF INTERESTS AND TRAINING**

The Deputy Monitoring Officer submitted a report in respect of compliance by district and parish members with their statutory obligation to provide a written undertaking to abide by the Code of Conduct (attached as Appendix 1 to the report), the up-to-date position of the register of interests, and whether appropriate training has been undertaken by those Members.

The Deputy Monitoring Officer advised that training on the 2007 Code was offered, via a personal invitation, to all District Council Members, parish clerks and chairmen on 17 October 2007 and 10 March 2008. The list attached at Appendix 3 to the report listed those Members

and clerks who had attended the training. Training had not been not offered to all parish members as the training room could not accommodate all Members of the whole district. Moreover, the District Council had no statutory responsibility to provide training, but did so as a matter of good practice. Parish/town clerks had been encouraged to attend so that they could guide their Members on the interpretation of the Code.

The Deputy Monitoring Officer currently held a schedule for the district and each parish council recording all declarations of acceptance of office (which included the undertaking to abide by the Code) and the register of interests. The schedules attached at Appendix 2 to the report were a summary of those more detailed records held by the Deputy Monitoring Officer.

The Committee noted that the summary of the District Council records demonstrated that all District Members had complied with the requirement to give an undertaking to abide by the Code and had completed their register of interests.

The Deputy Monitoring Officer advised that the summary of parishes demonstrated that the following Councils included some Members who had failed to return a signed undertaking:

*Knebworth; Newnham; Offley; St. Ippolyts; Weston; and Wymondley.*

The following Councils also included some Members who had failed to return an interests form:

*Bygrave; Knebworth; Offley; Reed; Rushden/Wallington; St. Ippolyts; Weston; and Wymondley.*

However, of those, the relevant Members of Bygrave, Newnham & Preston Parish Councils had returned incorrect forms rather than no forms at all. The Deputy Monitoring Officer had written to each of those Councillors on several occasions to remind them of the need to complete forms correctly. The Committee noted that the Chairman had also written early in 2008 to the clerks of parish councils where Members, at that date, had failed to submit declarations. He had reminded them of their Members' responsibilities for doing so.

A number of Members noticed some anomalies in respect of Appendix 2 to the report, which the Deputy Monitoring Officer undertook to investigate. She was also able to correct some imprecisions where information had become available in the time between the compilation and circulation of Appendix 2 and the committee meeting. The Committee supported the recommendations contained in the report, and in addition requested the Deputy Monitoring Officer to contact the Hertfordshire Association of Local Councils inviting them to initiate a training event for Town and Parish Councils on the undertaking, the register of interests, and the Code of Conduct generally. The Chairman suggested that the Committee could take a leading role in such an event.

**RESOLVED:**

- (1) That the Chairman of the Standards Committee write to each of the parish council clerks, naming the Members who had failed to return the undertaking and register of interests to the Deputy Monitoring Officer, and reminding them of their statutory obligations to do so as soon as possible;
- (2) That a further report be brought back to a later meeting of the Standards Committee to advise on progress relating to the forms;
- (3) That the Deputy Monitoring Officer consider relevant training for Members of the Council at the appropriate time;
- (4) That the Deputy Monitoring Officer be requested to contact the Hertfordshire Association of Local Councils inviting them to initiate a training event for Town and Parish Councils on the undertaking, the register of interests, and Code of Conduct generally.

**REASON FOR DECISION:** To ensure that all town and parish councils are abiding by their statutory obligations.

## 6. COMPLIANCE WITH THE CODE OF CONDUCT

The Deputy Monitoring Officer submitted a report which reviewed complaints made against councillors within the North Hertfordshire District since the introduction of the Code of Conduct in 2001.

The Deputy Monitoring Officer explained that each year the Council was assessed on its governance arrangements, as part of the assessment regime carried out by the Audit Commission. Assessment was against a set of criteria specified in the “key lines of enquiry”, against which the Council must demonstrate that it had suitable processes underpinning good governance arrangements.

The Deputy Monitoring Officer drew the Committee’s attention to an extract from the key lines of enquiry, attached at Appendix 1 to the report. At level 3, the key lines of enquiry asked the Council to demonstrate that:

“The Council has undertaken an assessment of standards of conduct, including how effectively Members are complying with the Code of Conduct, the number and types of complaints received, and takes action as appropriate”.

The Deputy Monitoring Officer stated that the report considered the number and type of complaints received since the introduction of the Code in 2001 and the effectiveness of the Standards Committee in meeting the above standard. The report outlined the complaints received, both prior to and post local referrals process, from which the Deputy Monitoring Officer had concluded:

- there had only been one complaint against a district councillor since the introduction of the Code of Conduct in 2001, and that that complaint was not considered to amount to a potential breach of the code of conduct;
- whilst most of the cases concerned town or parish councillors, in the majority of cases no further action was required to be taken against the councillors complained of;
- further training for one rural parish councillor should be arranged as soon as convenient;
- that standards of conduct were generally good amongst councillors and no immediate action was identified by the report.

The Vice-Chairman made it clear that, simply because the Standards (Assessment) Sub-Committee considered that a case was worthy of investigation, this did not mean that a finding against a Member for breach of the Code of Conduct was an automatic outcome. There had been a number of the investigations in North Hertfordshire, but not all had led to hearings, let alone findings that the Code had been breached. However, where there had been hearings, the Committee had found that the Code had been breached and proportionate sanctions had been imposed.

### **RESOLVED:**

- (1) That the conclusions of the report be noted, and that in future the Deputy Monitoring Officer be requested to report the number and types of complaints to the Standards Committee on a half yearly basis;
- (2) That the Deputy Monitoring Officer be requested to arrange regular training on the Code of Conduct for Members of the Council, parish clerks and chairmen and those town and parish councillors who have been identified as suitable for training through the investigation process.

**REASON FOR DECISION:** To ensure the good governance of Members.

## 7. REVISIONS TO THE CONFIDENTIAL REPORTING CODE

The Deputy Monitoring Officer submitted a report seeking consideration of further amendments to the Council’s Confidential Reporting Code. The proposed revised Code was attached at Appendix 1 to the report.

The Deputy Monitoring Officer reminded Members that the Council’s Confidential Reporting 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 policy last came before the Standards Committee on 16 September 2008, when the Committee suggested that the internal Human Resources policy could be made clearer, particularly in relation to the procedure for reporting a matter of concern. Following that meeting, the Deputy Monitoring Officer attended a seminar on whistle blowing run by 'Public Concern at Work', and had made a number of further amendments to the policy to take account of that training and the suggestions made by the Standards Committee.

The Deputy Monitoring Officer advised that, to reflect the comments of the Standards Committee, the policy has been amended to make clear:

- that whilst the Council encouraged employees to speak to their line managers, there was a process for escalating concerns where they were sensitive or serious;
- the employment protections that were offered to staff who wanted to report their concerns;
- that openly discussing concerns was a culture that the Council would like to encourage, but that confidentiality was assured for sensitive cases;
- that external reporting was possible, but should be a last resort.

The Deputy Monitoring Officer commented that the previous policy was thought to be confusing because it had too many reporting lines: either to the line manager, the audit manager, the Chief Financial Officer, the Chief Executive or the Chairman of the Standards Committee. All of these individuals then had to report the matter to the Monitoring Officer. The revisions to the policy made clear that, whenever possible, concerns should be addressed to the line manager unless they were particularly sensitive or serious, in which case the officer should go direct to the Monitoring Officer and, thereafter, along a clearly-described chain.

The Committee noted that the previous policy did not clarify when and to whom the officer should report if he/she wanted to take the concern outside of the authority. In such cases, officers may believe that the press would be the appropriate means of airing their concerns, when the regulator (the Audit Commission) was in fact the body most likely to assist with the concern. In addition, the Audit Commission would give advice on raising concerns through the internal procedures if the officer had not already done so.

The Deputy Monitoring Officer explained that the policy now addressed the approach taken to anonymous allegations and confidential reporting, and when confidentiality might not be possible. The policy also aimed to distinguish between personal concerns of the employee, for which the grievance procedure was available, and concerns which affected colleagues and others.

The Deputy Monitoring Officer advised that the policy had been considered by the Joint Staff Consultative Committee (JSCC), at its meeting on 10 December 2008. The JSCC had made the following comments:

- (i) What if the concern or complaint was about the Monitoring Officer? The Deputy Monitoring Officer advised that she would be amending the policy document so that such complaints could be made to either the Independent Chairman of the Standards Committee, the Chief Executive of the Council, or Public Concern at Work;
- (ii) It would be useful if a flowchart could be prepared, to be appended to the policy document, showing the process for initiating and, if necessary, escalating a complaint through the system. The Deputy Monitoring Officer had undertaken to prepare such a flowchart.

The Committee considered the policy document, and made the following suggestions:

- "Employment Protection" – this section should be tightened to re-inforce the protection available for employees;
- "Who do I speak to?" – seventh paragraph – this should be re-worded to reflect the fact that complainants should only contact the Audit Commission to discuss the matter once all internal processes had been exhausted.

**RESOLVED:**

- (1) That the Council's internal employment policy for Confidential Reporting, as attached at Appendix 1 to the report, and as now amended, be agreed;
- (2) That the Deputy Monitoring Officer be requested to work with the Audit Manager in order to produce protocols for the investigation and review process, and that these be referred to a later Standards Committee for any further comment, prior to approval.

**REASON FOR DECISION:** To ensure that the Council has an effective means of tackling any instances where members of NHDC staff feel that they have legitimate concerns about the way the Council operates.

## **8. DCLG CONSULTATION DOCUMENT ON CHANGES TO THE CODE OF CONDUCT**

The Deputy Monitoring Officer submitted a report which detailed a proposed response to the consultation paper issued by the Department of Communities and Local Government (DCLG) on proposed changes to the Code of Conduct for Members (attached as Appendix A to the report).

The Deputy Monitoring Officer reminded the Committee that the Order introducing the revised Code of Conduct came into force on 3 May 2007, and that the Code had been adopted by the Council at its meeting held on 17 May 2007.

The Deputy Monitoring Officer explained the need for these further changes to the Code appeared to have arisen out of the judgment by Mr Justice Collins in the Livingstone case that the Code could not be construed to apply to a Member in his/her private life. The Code was found only to apply when a Member was performing the functions of his/her office. Legislative changes were needed to apply the Code to Members acting outside of their official capacity.

The Deputy Monitoring Officer stated that, in October 2007, the Local Government and Public Involvement in Health Act amended the Local Government Act 2000 to introduce new sections 50(4A) to (4B) indicating paragraphs of the Code of Conduct which were to apply to conduct in an official capacity and where criminal offences committed by Members acting outside of their official capacity might amount to breach of the Code. Those legislative changes had not yet been brought into force. The intention of the consultation was to clarify where criminal activity might bring the Code of Conduct to bear. The consultation asked a series of questions, which were set out in the report, together with a set of draft proposed responses to these questions suggested by the Chairman, Vice-Chairman and Deputy Monitoring Officer.

The Committee considered and endorsed the draft responses, subject to the following amendments:

- **Question 1 – “Do you agree that the Members’ Code should apply to a Member’s conduct when acting in their non-official capacity?”** – It was considered that the second paragraph of the response should be re-worded to make it more explicit that the relevant parts of the proposed Code should be limited to criminal conduct of Members when acting in their non-official capacity.
- **Question 6 – “ Do you think that the amendments to the Members’ Code suggested in this chapter are required? Are there any other drafting amendments which would be helpful? If so, please could you provide details of your suggested amendments?”** – In relation to the third paragraph of the draft response, the Committee felt it would be appropriate for the level at which a Member was required to register any gift or hospitality should be raised from the existing £25 limit to £50, rather than the £75/£100 level suggested for discussion in the response.

In respect of the reference made in the report concerning Section 236 of the Local Government and Public Involvement in Health Act 2007 (“the Act”), that enabled local authorities to arrange for the discharge of functions by ward councillors within their own wards, it was noted that this Section made no provision for the application of the Members’ Code of Conduct to such discharge of functions. The Deputy Monitoring Officer advised that this Section of the Act had yet to be enacted, and that as soon as it was, there would be an opportunity for the Standards Committee to “re-visit” this matter.

*[NOTE: Two days after the meeting, on 17 December 2008, the Chairman of the Standards Committee proposed to the Deputy Monitoring Officer a further comment for inclusion in the Committee's response. He felt that it was important to reflect in the revised Code that where any criminal conviction, or acknowledgement of guilt, formed the basis of a complaint, there should not be an automatic assumption that the Code had been breached. For a Standards Committee to make such an assumption, without giving full and fair consideration to such a complaint would be unfair to the person complained of and possibly in breach of Article 6 of the Human Rights Act.]*

**RESOLVED:** That the written response to the consultation on proposed changes to the Code of Conduct, as set out in the report, and as now amended, be endorsed, and the Deputy Monitoring Officer be authorised to send this response to the Department of Communities and Local Government before the consultation deadline of 24 December 2008.

**REASON FOR DECISION:** To ensure that an adequate response is provided regarding proposed changes to the Code of Conduct.

## 9. POLITICALLY RESTRICTED POSTS

The Deputy Monitoring Officer submitted a report advising Members of an extension to the role of the Standards Committee to include decisions relating to officers holding Politically Restricted Posts.

The Deputy Monitoring Officer advised that, in England, the responsibility for the granting of exemptions from political restriction had transferred to the Standards Committee, with effect from 1 April 2008. The Secretary of State was expected to issue guidance to local authorities in order to assist standards committees with this new role.

The Deputy Monitoring Officer commented that the first statutory attempt to ensure the political impartiality of those who served in local government was under the Local Government Act 1972 (LGA 1972), which prevented a councillor from being employed in any capacity by the local authority he/she was serving as a Member. In 1989, the Local Government and Housing Act 1989 (LGHA 1989) introduced the principle of 'politically restricted posts' and of restricting the political activities of local authority employees. These reforms were made in response to the Widdecombe Report, which identified issues of concern involving local authority officers and the apparent lack of political impartiality, which could lead to divided loyalties and thereby to a prejudiced service.

The Deputy Monitoring Officer advised that the Widdecombe Report distinguished 'twin-tracking', which was where a local authority employee was also an elected Member of another local authority, for special criticism. The concerns included inability to serve the interests of the Council on which they sat, and the potential lack of political impartiality. Twin-tracking, involving those holding 'politically restricted posts', was now restricted by the LGHA 1989 which prohibited such activities.

The Deputy Monitoring Officer explained that the effect of including a local authority employee on the list of 'politically restricted posts' would be to prevent that individual from having any active political role either in or outside the workplace. Politically restricted employees would automatically be disqualified from standing for or holding elected office, and these restrictions were incorporated as terms in the employee's contract of employment. It was left to the discretion of each authority as to whether or not to reinstate an employee who resigned his/her post, and then consequently fought and lost an election.

The Deputy Monitoring Officer commented that, in practice, this equated to debarring a substantial number of local government employees from standing for office. Those employees were also restricted from:

- canvassing on behalf of a political party or a person who was or sought to be a candidate; and
- speaking to the public at large or publishing any written or artistic work that could give the impression that they were advocating support for a political party.

It was noted that the cumulative effect of these restrictions was to limit the holders of politically restricted posts to bare membership of political parties, with no active participation within the party permitted. Each local authority was under a duty to draw-up and regularly update a list of those posts which were politically restricted. Politically restricted posts fall into three broad

categories of "Specified Posts", "Posts paid at or above a certain level", and "Sensitive Posts". These terms were defined in the report.

In respect of "Specified Posts", all these post holders were politically restricted without rights of appeal for exemption to the Standards Committee. With regard to "Posts paid at or above a certain level", these post holders were allowed to appeal to the Standards Committee to be exempted from the list, on the grounds that they did not influence policy or speak on behalf of the authority to journalists or broadcasters. In relation to "Sensitive Posts", these post holders could appeal to the Standards Committee to be exempted from the list, on the grounds that the authority had wrongly applied the criteria.

The Deputy Monitoring Officer advised that, upon receipt of an appeal, the Standards Committee would be required to meet to consider whether or not the criteria had been correctly applied, and could either affirm the decision to list the post as politically restricted or lift the restriction. This function could not be delegated to a sub-committee.

The Deputy Monitoring Officer stated that the Secretary of State had not yet issued any detailed advice on the new regimes. In the meantime, the general guidance and model certificate of opinion provided in the circular letter (attached as Appendix A to the report) issued by the previous Independent Adjudicator remained helpful in locally transferring the independent adjudicator's role to the Standards Committee.

**RESOLVED:** That the extended remit of the Standards Committee's role in respect of Politically Restricted Posts, be noted.

**REASON FOR DECISION:** To ensure that the Standards Committee had an awareness of its extended role.

#### 10. DATE OF NEXT MEETING

Following a brief debate, it was

**RESOLVED:** That the next two meetings of the Standards Committee take place on:

- (1) Monday, 23 February 2009, at 7.30pm in the Council Chamber, NHDC Offices, Gernon Road, Letchworth Garden City;
- (2) Monday, 22 June 2009, at 7.30pm in the Council Chamber, NHDC Offices, Gernon Road, Letchworth Garden City.

The meeting closed at 9.25pm.

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Chairman