

NORTH HERTFORDSHIRE DISTRICT COUNCIL

STANDARDS COMMITTEE

MINUTES

**Meeting held at Foundation House, Icknield Way, Letchworth Garden City
on Tuesday, 21 February 2017 at 7.30p.m.**

PRESENT: *District Councillors Mike Rice (Chairman), Alan Millard (Vice-Chairman), Judi Billing, Julian Cunningham, Jane Gray, Steve Hemingway, David Levett, Bernard Lovewell, M.R.M. Muir, Frank Radcliffe and Terry Tyler (from 7.45pm).
Parish Councillors Helena Gregory and Robert Logan (Co-opted non-voting Parish Council Representatives)
Mr Nicholas Moss (Independent Person) and Mr Peter Chapman (Reserve Independent Person) – non-voting advisory roles.*

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

ALSO PRESENT: *James Ellis (Advisory & Litigation Lawyer), Nurainatta Katevu (Property and Planning Lawyer) and Kiren Kalirai (PA to the Monitoring Officer).*

8. APOLOGIES FOR ABSENCE

No apologies for absence were received.

9. MINUTES

RESOLVED: That the Minutes of the meeting of the Committee held on 12 October 2016 be approved as a true record of the proceedings and signed by the Chairman, subject to the following amendments:

Minute 6: Standards Matters (Page 3) – sixth paragraph: replacement of the word “and” with “with” in the penultimate line; and seventh paragraph: deletion of the words “decided” in the second line.

10. NOTIFICATION OF OTHER BUSINESS

No other items were presented for consideration.

11. CHAIRMAN’S ANNOUNCEMENTS

- (1) The Chairman reminded Member that, in line with Council Policy, the meeting was being recorded and requested that people announce their name prior to speaking;
- (2) The Chairman reminded Members that, in line with the Code of Conduct, any Declarations of Interest should be declared immediately prior to the item in question.

12. PUBLIC PARTICIPATION

There was no public participation.

13. STANDARDS MATTERS

The Monitoring Officer presented a report in respect of standards issues generally.

Complaints Update

There had been no complaints since the last Committee meeting. The Monitoring Officer, Deputy Monitoring Officer and Legal Team had, as usual, provided advice on interests and decision making to a number of Members.

Motion of Censure

Further to the Standards Committee meeting in October 2016, Members were aware that Full Council on 24 November 2016 had passed the Motion of Censure, pursuant to the findings of the Standards Sub-Committee. Nothing further had been heard from the former Member who had been censured.

Code of Conduct Review and Register of Interests

Members were reminded that the current Code of Conduct for Councillors was adopted by Full Council in July 2013. The Monitoring Officer and Deputy Monitoring Officer would be undertaking a review of the Code, to ensure it was working as intended, with a view to reporting to the next meeting of the Standards Committee. It was understood that Hertfordshire County Council and Stevenage Borough Council were currently reviewing their Codes of Conduct, which were adopted in 2012.

The Monitoring Officers within Hertfordshire had also discussed whether or not to introduce a common Register of Interests form and this was currently being explored. There were clear benefits for 'dual hatted' Members who would no longer have the situation of having to declare on the register different interests at different authorities, and the additional benefit of a consistent approach across the County. Hertfordshire County Council and NHDC currently had the same Register of Interests form, so if this proposal went ahead it was likely that some (or all) of the Declarable Interests within the NHDC Code of Conduct would be required to be registered. If this proposal came forward it would be as part of the Code of Conduct Review.

Protocol with Hertfordshire Police in relation to DPI offences

The Committee was informed that, for the last few years, there had been a Protocol in place between Hertfordshire Constabulary and the Hertfordshire Monitoring Officers for the referral of potential Disclosable Pecuniary Interest offences under the Localism Act. The Protocol sets out what would be referred and how the Police would handle the referral. The Protocol was currently being reviewed and there were likely to be some minor amendments to clarify when a police referral would be made. The agreed changes would be reported to the next Standards Committee meeting.

Member Training

The next item on the agenda of the Committee was some training on the Code of Conduct and governance issues, in order to refresh Members' minds of the key issues they should be aware of. It was proposed to provide training to all Members later in the year, and therefore the Committee would be asked to consider which elements of training should be emphasised in the wider session in due course.

Current Issues

In the Members' Information Service on 3 February 2017, the Monitoring Officer had re-issued the Guidelines for Members when using Social Media. These Guidelines were originally approved by Standards Committee in June 2013 and had now been re-issued on three occasions, in order to remind Members of the importance of using social media responsibly.

The Monitoring Officer advised that the Members' Information Service on 18 November 2016 had included a reminder of the reasons for "Part 2" confidential committee reports and the potential consequences of not maintaining that confidentiality.

RESOLVED: That the contents of the report be noted;

REASON FOR DECISION: To ensure good governance within the Council.

14. TRAINING ON STANDARDS ISSUES

With the aid of a Powerpoint presentation, the Deputy Monitoring Officer, assisted by the Monitoring Officer, facilitated a training session in respect of the NHDC Code of Conduct.

Each aspect of the Code was accompanied by some examples, which the Committee gave their opinions on throughout the meeting. It was noted that many of the examples referred to

matters which were the subject of actual adjudication decisions in Wales, which still had a national Standards Board regime, unlike in England, where the Standards Board had been abolished in 2012, following the Localism Act, and English Local Authorities had adopted Local Codes of Conduct.

The training session covered the following points:

When does the Code apply?

Paragraphs 1 and 2 of the Code stated that it applied when attending all meetings, including informal ones with officers and members if conducting Council business, and when they were acting or giving the impression that they were acting as a Councillor. For example, if a Member was a Director or Trustee on an external body and attended an informal meeting of the Council to discuss business relating to the external body, they had an interest in the matter and must act accordingly. The Member would also have legal and/or fiduciary duties to that body, and were also bound to act according to any Code adopted by or that applied to that body.

Paragraph 3.2 - Duties and Responsibilities

- (a) Equality – in simple terms, do not discriminate against people on the grounds of age, disability, gender reassignment, marriage or civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation. Types of discrimination included direct / associative / by perception / indirect / harassment / victimisation. As there was an equality duty on the Council, potentially NHDC would be liable as well as the councillor should there be a breach of the Code.
- (b) Show respect and consideration to others – this related to respect for or from other Members; and respect for or from the public and NHDC employees.
- (c) Do not bully or harass – Bullying was offensive, intimidating, malicious, insulting or humiliating behaviour. It could be a one-off or a pattern directed at a weaker person or someone it was perceived the Member had influence over. Harassment was repeated behaviour which upset or annoyed people. It did not need to be face to face, as it could be through making continuous and/or unfounded allegations about people in public, in Council meetings, through the press, e-mails, blogs or other social media.
- (d) Do not compromise the impartiality of people who work for or on behalf of NHDC – Members should not pressure employees or contractors who work for NHDC to carry out their duties in a biased or partisan way. Councillors must not provide or offer any incentive or disincentive or reward to act in a particular way or to reach a particular decision. Of itself this may also be a criminal offence, such as under the Bribery Act 2010m, which could open the Council to legal challenge. It did not mean that a councillor could not question an employee with directness, and in a civil manner, to understand reasons. Policies of the Majority Group should be taken through the democratic process by relevant officers. However, if these were regulatory or Administrative Committee decisions, like Licensing or Planning, employees were expected to reach their own professional conclusions and express these in reports and at meetings.

Paragraph 3.3 – Information

- (a) Do not disclose confidential information – in broadest terms, such information covered all forms (written, oral, e-mails, videos etc.). It was confidential if its nature was sensitive or personal; it was stated or implied as confidential; if disclosure would be detrimental to the person/body who wished it to be kept confidential (for example, a commercial/trade secret); and if the Council had voted that it be kept exempt (Local Government Act 1972 Schedule 12A reason) or if the document had been marked confidential or sent with an e-mail marked as such. However, there may be justified reasons to disclose information if the person authorised to give consent allowed it; it was required by law to do so; the purpose was to obtain professional advice; or if the disclosure was reasonable, in the public interest and made in good faith, and that disclosure would not be in contravention of NHDC's reasonable requirements.
- (b) Do not prevent access to information a person is entitled to by law – As a general rule Members should assume that documents (including e-mails) produced as part of their

role may at some time be Disclosable. This included information, for example, that a member of the public had a right to access under the Data protection Act 1998 or the Freedom of Information Act 2000/Environmental Information Regulations 2004. In considering such requests, the relevant officer would take into account if any exemption or exception to disclosure applied, but would be bound to follow the legal requirements. It was noted that destroying requested information outside of a public authority's normal policies was unlawful and may be a criminal offence if done to prevent disclosure.

Paragraph 3.4 – Conduct

- (a) Do not bring your office or the authority into disrepute – Members' actions were subject to greater scrutiny in their public and private life, and their behaviour might have an adverse impact on their office or NHDC. There was also an inter-relationship between this obligation in the Code and others (eg. if a Member discriminate against someone, then they may also be seen to have brought him/herself or the authority into disrepute). Equally, the manner in which a member conducted him/herself in public or on social media could have an impact on public perception (eg. unnecessary or personalised attacks on NHDC employees could be seen as bullying and bringing the Member into disrepute).
- (b) Do not make vexatious, malicious or frivolous complaints – these could be complaints motivated by malice (a desire to do harm) or by political rivalry, and may be designed to disadvantage another Member or staff. It may be where evidence of misconduct/administrative failings is weak or non-existent. Repeated complaints regarding another Member or staff (on a particular issue or multiple issues) and/or pre-arranging in public of the complaints is likely to be a breach of the Code. Complaints against staff and other councillors should be dealt with under normal channels.
- (c) Comply with any request of the authority's Monitoring Officer or Section 151 Officer, in connection with a statutory investigation (including alleged Code breaches) – in simple terms, Members should reply to all correspondence (including electronic) and telephone calls. A councillor should make him/herself available for interview if required and make available copies of any requested documents. The requirement to co-operate with an investigation applied whether the member was a witness or the subject of the investigation. Allowances would be made for verifiable urgent pressures/arrangements previously made (eg. holidays), although priority must be given to the investigation to prevent delay for all concerned.

Paragraph 3.5 – Use of your Position

- (a) Do not use or attempt to use your position improperly for your or any other person's advantage or disadvantage – a councillor must not use his official position for personal benefit or to harm others. It also linked to anti-bribery requirements. There was still an ability for a Member to speak as a Member Advocate in order to represent concerns, although there may be Code of Conduct restrictions if a Disclosable Pecuniary Interest or Declarable Interest applied.
- (b) Use of the Council's resources – such resources included any NHDC provided or financed computers, IT facilities, transport, printers, stationery, parking or support from NHDC employees (or contractors undertaking Council services), Council offices and facilities. Resources must be used for councillor business or business authorised by the Council. Particular issues related to publicity and use of resources around Election times.

Paragraph 3.6 – Decision Making

- (a) and (b) Make a decision on the basis of merit, in the public interest, give reasons having regard to statutory officers' advice – this meant considering all the arguments. Councillors should follow statutory officers' advice unless there was a strong reason for not doing so. It went beyond simply considering and rejecting advice if unwelcome. A councillor must be in a position to fully articulate why they had not followed the advice and to record the reason for not doing so. Giving reasons was a requirement for regulatory and administrative decisions (eg. Planning and Licensing) and led to fair/reasonable decisions for the Council, as well as protecting councillors against complaints.

Paragraph 3.7 – Compliance with the Law and the Authority’s Rules and Policies

- (a) Observe the law and rules on claiming of expenses and allowances – if unsure, advice should be sought from Committee and Members Services. Members should keep proper records of expenses.
- (b) Comply with the NHDC Members Protocol for Gifts and Hospitality – declare any gift or hospitality related to the Member’s role as a councillor of at least £50 to the Monitoring Officer, using the relevant declaration form and where appropriate declare at a meeting as a Declarable Interest. The Bribery Act 2010 underpinned this so that the Member was not seen as being placed under an improper obligation (ie. not accepting something that made a Member beholden to the donor.
- (c) Comply with other NHDC policies setting out required conduct from Members – Members should make themselves familiar with NHDC Policies and ensure that these were followed.

Paragraphs 4.1 to 4.5 – Disclosable Pecuniary Interests

These were interests defined under the Localism Act 2011 and The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012. A Member had a Disclosable Pecuniary Interest (DPI) if it was his/her or their spouse or civil partners’ interest covered:

- Employment, office, trade profession or vocation – carried out for profit;
- Other payment or financial benefit – other than from NHDC, given/paid in the last 12 months; for any expenses incurred for being a Member, or towards election expenses, including payments from a Trade Union;
- Ongoing contract(s) – with NHDC for goods and services;
- Land or interest in land – in the NHDC area;
- Licence or interest in a licence – alone or jointly with others for a month or more, to occupy land in the NHDC area;
- Corporate tenancy or interest in a corporate tenancy – and the Member knows that NHDC is the landlord; and
- Beneficial interest in securities – place of business/land in the NHDC area; more than £25,000 or 1/100th share capital or 1/100th of total issued share capital of a class of shares.

A Member must notify the Monitoring Officer of any DPI within 28 days of taking office, and of any changes DPIs. Any interests would be included on a publicly available register on NHDC’s website (except if “sensitive information”). If a Member has a DPI which was the subject of Council business it would affect that member’s ability to participate in that business and attend meetings to discuss it and make decisions (as per Paragraphs 6.1 and 7 of the Code of Conduct). Even if it was not a DPI that did not automatically mean that a Member could participate, as it may be a Declarable Interest which was also subject to restrictions on Members’ participation. Failure to declare a Declarable Interest may create a risk of an accusation of predetermination/bias, which may be difficult to refute. It was always a Member’s responsibility to seek and consider advice on interests and to comply with such advice.

Paragraph 4.6 – Declarable Interests

Members should declare Declarable Interests if the decision:

- (a) might affect their wellbeing/financial (and that of other named parties) more than the majority of the Council Tax payers, ratepayers or inhabitants of the Member’s ward or NHDC’s administrative area; or
- (b) might affect the interests listed in Appendix A to the Code for the Member’s family, their employer, a person of body that they had a close association with; or
- (c) is so significant that it was likely to prejudice the Member’s judgement of the public interest; or
- (d) related to someone/body who had provided a gift or hospitality of at least £50 to the Member within the last 6 years of the date of the decision; or
- (e) it related/affected any body of the which the councillor was a member of or in a position of general control or management to which they were appointed/nominated to by NHDC; or

it exercised functions of a public nature; or charitable purposes; or its principal purpose included influence on public opinion or policy (including any political party or trade union).

If any of the above applied, then the Member's participation in the meeting might be affected, as per paragraphs 7.3 to 7.5 of the Code of Conduct.

Paragraphs 6, 7 and 8 – Declaring/Participating and Dispensations

In summary, if a Member had a DPI they must declare it at meetings, must not participate in the debate and vote on the item, and must leave the meeting. This was always subject to any application/and approval of a dispensation under Paragraph 8 of the Code of Conduct by the Monitoring Officer.

If a Member had a Declarable Interest, again it must be declared at meetings and, if it was so significant that it was likely to prejudice their judgement of the public interest, they must not participate in the debate or vote on the item. However, they were entitled to speak to the meeting as member of the public, following which they should leave the meeting.

RESOLVED: That the training on Standards Issues be noted, and that any points to be emphasised in the wider Member training on standards/governance issues be conveyed to the Monitoring Officer/Deputy Monitoring Officer by Members of the Committee, Parish Council representatives and independent Persons.

REASON FOR DECISION: To ensure good governance within the Council.

The meeting closed at 9.40pm.

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Chairman