

## **1. INTRODUCTION**

- 1.1 This is the sixth Annual Report of the Epping Forest District Standards Committee covering the municipal year 2007/8. The aim of this report is to describe some of the issues which have arisen since our last report and also likely future development.

## **2. THE COMMITTEE**

- 2.1 The current membership of the Standards Committee is as follows:

(a) three independent members - Mary Marshall, Grenville Weltch and Murray Wright;

(b) one parish representative (Daphne Borton) (plus a deputy - Brian Surtees) both of whom are nominated by the Epping Forest Association of Local Councils; and

(c) two District Councillors: during 2007/08 Councillors Penny Smith and Janet Whitehouse were appointed by the Council.

- 2.2 The Standards Committee is supported by Colleen O'Boyle (Solicitor to the Council and Monitoring Officer), Ian Willett (Deputy Monitoring Officer), Graham Lunnun (Assistant Director - Democratic Services).

## **3. CHANGES IN MEMBERSHIP**

- 3.1 We mentioned in our 2006/07 report that Dr Derek Hawes, a founder Member and founder Chairman of the Standards Committee had indicated that he would be retiring from those positions in June 2007. The Committee was therefore happy to welcome Mary Marshall, another founder Member of the Committee, who succeeded to the Chair early in the New Year. Likewise, we were happy to welcome back former District Councillor Daphne Borton as the new Parish representative in succession to Jason Salter. Mrs Borton had previously served on the Standards Committee as one of the two District Councillor representatives.

- 3.2 As part of our latest annual report, we should not miss the opportunity of paying tribute to Dr Hawes' work as Chairman and Member of the Standards Committee since its inception. We were very gratified to see the very warm response to his retirement shown at the District Council meeting where he received the congratulations and thanks from all sides of the Council Chamber. Likewise, we should pay tribute to the work of Jason Salter as the first Parish representative serving on the Standards Committee. His forthright views and contributions to our discussions were always appreciated and he brought with him a very close knowledge of the workings of Parish and Town Councils which on a number of occasions the Committee found very helpful.

## **4. STANDARDS COMMITTEE - TERMS OF REFERENCE**

- 4.1 The terms of reference of the Standards Committee are defined by the Local Government Act 2000 and various Government regulations. These are set out in Article 9 of the District Council's Constitution and a number of Council Protocols. Continuing advice by the Standards Board for England have also shaped the work of the Committee.
- 4.2 The duties of the Committee cover a number of statutory elements including proposing and amending the Code of Conduct for Parish and District Councils, promoting the Code and its values, providing training, the investigation of complaints

against the elected members, adjudicating on complaints, giving advice on ethical issues as they arise and granting dispensations from the effect of prejudicial interests in accordance with the statutory provisions.

- 4.3 It is clear to us that as a result of the Local Government Etc Act 2007, further changes will take place next year in relation to the role of the Committee. We shall be bringing forward proposals during the coming year which reflect the statutory changes made in the new Act. Principal amongst these changes are the Committee's new responsibility for carrying out an initial assessment of all complaints received and determine those which should be investigated and those where it would be inappropriate to do so. Additionally, new responsibilities have been passed to the Standards Committee to deal with political restrictions and appeals by staff against that designation. It is also apparent that although the Committee have already made arrangements for officers to deal with the initial assessment of complaints, there is a requirement for the Standards Committee itself (probably through Sub-Committees) to be involved in that determination.
- 4.4 These various changes in our role will continue to operate within the framework of our general responsibility of dealing both with the District Council and the 24 Parish and Town Councils in the District. We will continue also with our non-statutory roles to advise District and Parish Councils on any other Protocols which are set out in the District Council's Constitution.

## **5. THE YEAR IN REVIEW**

- 5.1 This section of the report outlines the main activities of the Committee over the past Council year (2007/08), each section reflecting the main elements of the current terms of reference.

### **Review of Ethical Framework**

- 5.2 On our recommendation, Epping Forest District Council at its meeting on 28 June 2007 approved the revised Code of Conduct as required by the Government. The Committee also co-ordinated the process of Parish and Town Councils within the District adopting the revised Code and we are pleased to report that all Parish and Town Councils in the District have adopted the new Code without amendment.
- 5.3 One result of the adoption of the new Code was the introduction of revised registrations of interest by members, new procedures for recording gifts and hospitality and changes to various parts of the Council's Constitution and its various Protocols and advice documents. We are pleased to say that all these matters have been put in place during the year and we comment below on some of the details.

### **Local Government Etc Act 2007**

- 5.4 This new Act became law in December 2007. A section of the Act was devoted to the role of Standards Committees and the Code of Conduct. Some of the detail on these provisions still remains to be enacted by the Government by way of further regulations but the future pattern for complaint handling in respect of the Code of Conduct is now clear.
- 5.5 In future, all complaints will be referred to the Monitoring Officer/Standards Committee for an initial screening as to whether an investigation should be carried out, the process of carrying out investigations and adjudicating on the results of those investigations and applying penalties where necessary will now fall to the Standards Committee. It will be appreciated that up to now the initial screening of complaints and a substantial number of investigations of those pursued has been conducted by

the Standards Board for England although some of those complaints have already been referred to the Standards Committee either for adjudication or for investigation and adjudication.

### **Initial Screening of Complaints**

- 5.6 We reported in our last report that we had already agreed arrangements for officers to assume clearly defined roles in respect of the future handling of complaints, bearing in mind that the initial screening of applications seemed likely to be devolved by the Standards Board for England to Monitoring Officers. However, it is now clear from the information we have received about the new regulations which will put this regime in place that members of the Standards Committee itself will need to be involved in the process. Likewise, it is clear that there needs to be a discrete allocation of roles between those members who carry out the initial screening and determination of whether complaints are to be investigated from those who are responsible for adjudicating on the outcome of reports. Also, there will be a requirement for a different group of Standards Committee members to deal with any appeals in regard to any complaint on which it is decided not to pursue investigation. Added to this complexity, is the continuing requirement for a Parish or Town Council representative to be involved in those matters affecting Parish and Town Councils and their members.
- 5.7 We have already given preliminary consideration to this process. It seems to us that we must in future have sufficient members on the Standards Committee in order to ensure that three discreet Sub-Committees are able to function. It may be that during our review of our terms of reference during the current year we will be bringing forward proposals but the number of members of this Committee should be increased to recognise this additional workload.

### **Government Consultation**

- 5.8 We have made the point already that we await Government regulations on the initial screening of complaints. However, our thinking has been assisted by recently produced Government consultation documents which have given a clear indication of how the regulations will be drafted. We have responded in detail to the most recent consultation document and a copy of our letter to the Department for Communities and Local Government is attached as Appendix 1 to this report.
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### **Promoting the Code and its Values and Training**

- 5.9 The Committee has well-established arrangements for holding training courses in the Code of Conduct and in the Planning Protocol. In 2007/08, one course was held in each subject and these were open to both Parish/Town Councillors as well as District Members. This will continue in the new Council year. As a Committee, we were keen to hold a further training course in the Planning Protocol during the year but because of a congested meetings calendar we were unable to do so. This training course was designed to point up the changes made to the Planning Protocol as a result of the adoption of the new Code of Conduct.
- 5.10 In order to cover for the difficulties in convening a course, we issued a letter to all Parish and Town Councils which was published in the Members' Information Bulletin of the District Council to highlight these changes.

### **Adjudicating/Investigating Complaints against the Elected Members**

- 5.11 We are pleased to report that during 2007/08 no new investigations were required into complaints against members. In fact we will go so far as to say that the year was

characterised by a steadily declining throughput of complaints. Many complaints, as the Council will know, are screened by the Standards Board for England and are never formally investigated. Even complaints in this category have declined.

- ... 5.12 Further statistics are given on the position for 2007/08 in Appendix 2 and we hope that the current trend will continue.

### **Giving Advice on Ethical Issues**

- 5.13 One of our main tasks this year has been to review various advice documents that we have issued over the years in the light of the new Code of Conduct. This has affected the Planning Protocol, Guidance given regarding the Receipt of Gifts and Hospitality, Guidance on use of Council Facilities by Elected Members (including advice on the proper use of IT facilities) and Relationships with Outside Organisations. We have carried out these reviews and have re-issued the various advice documents with a commentary which explains where the changes have been made and how these changes reflect the new Code of Conduct.

### **Giving Advice on Ethical Issues - The Planning Protocol**

- 5.14 The most significant piece of advice that we have provided to elected members in the District has always been the Planning Protocol. The involvement of elected members in the planning process has many pitfalls for members and many issues arise regarding conflicts of interest and involvement in planning matters which require councillors to be very vigilant as to their position. A number of significant changes had to be made to the Planning Protocol this year to reflect the new Code of Conduct. We would like to highlight now one area in particular which has already been the subject of further comment to us and this is in relation to the ability of members with prejudicial interests to address planning meeting.
- 5.15 Under the old Code of Conduct it was not permissible for councillors who had declared prejudicial interests to be involved in any way in any planning matter relevant to that interest. However, the new Code of Conduct opened up the opportunity for those members to exercise their constituency role in addressing Planning meetings on particular applications before withdrawing from the meeting and taking no further part in the debate. We have noted that several members of the District Council have already availed themselves of this opportunity and we were therefore careful at the outset to give advice which made it clear to the public the exact role those members were performing. For instance, we strongly recommended that members should make their representations from the public seating rather than their committee place, we also stated that those members should be subject to the same limits as to the time available for addressing the Committees as any member of the public and those representations should be taken first before any other speaker is heard and that the member having concluded should then leave the meeting.
- 5.16 It has been drawn to our attention that on one occasion this procedure was not followed and we have therefore asked the Monitoring Officer to issue further advice and reminders about the importance of this procedure. We take the view that the public must be absolutely clear about this unusual procedure so that there are no misunderstandings as to the proper role of members in these circumstances. We have also asked that the Monitoring Officer should emphasise our advice in this coming year's training courses.

## **Giving Advice on Ethical Issues - Outside Organisations**

- 5.17 Up to the adoption of the new Code, we had relied on our own Guidance Note concerning how members should act if they were serving on other public bodies. However, we were pleased to note that the new Code of Conduct does address this issue quite clearly. For those members who serve on public bodies of various kinds, the requirement is now that they should declare a personal interest except on matters relating to financial or well-being issues for the organisation concerned. Members still have to consider whether there is a further prejudicial interest in the sense that a member of the public might feel that their judgement is swayed by that membership but provided there is no prejudicial interest, members are only required to declare a personal interest. This rendered redundant our previous Advice Note and we have therefore withdrawn it.

## **Giving Advice on Ethical Issues - Gifts and Hospitality/Member Facility**

- 5.18 The new Code of Conduct made new arrangements for registering gifts and hospitality. These are no longer subject to a separate written disclosure but must now be included in a member's registration of interest. With this in mind, a new registration form has been created and this is used by members when they choose to accept gifts and hospitality valued in excess of the statutory minimum.
- 5.19 We also made changes to the Guidance Note regarding use of Council Facilities and IT which were not of a major nature but simply cross-referenced the advice to the new Code.

## **Granting Dispensations from the Effects of Prejudicial Interests**

- 5.20 We considered one case of this nature during 2007/08.
- 5.21 The case in question related to a contract which was in the process of being let by the Council for which one councillor in his business capacity was a tenderer. As the tenders were due to be considered by the Cabinet there was naturally concern by the Members of the Cabinet and particularly by the Portfolio Holder concerned about the conflict of interest that this presented bearing in mind that the councillor who had submitted the tender was of the same political party as the Cabinet member.
- 5.22 Our standard procedure in relation to requests for dispensations from prejudicial interest is to allow those members most affected the opportunity to submit their own applications for the dispensation. This is the procedure we adopted in this case and we circulated the appropriate pro forma to the eight members of the Epping Forest District Council Cabinet.
- 5.23 This resulted in five applications for dispensations out of the eight Cabinet members. Of those, three applications for dispensations were refused as the nature of the prejudicial interest were so significant in our view that the members concerned should not take part in the decision making on this matter. The remaining two applications were agreed as it was considered that the prejudicial interest was less substantial and should not prevent those members from dealing with the matter.
- 5.24 The difficulty was that there were three other members of the Cabinet who have not signified a prejudicial interest. It was therefore our view at the time that the lack of any approach to us for a dispensation indicated they did not consider that such an interest existed.
- 5.25 With the result of our rulings we understand that the Cabinet adopted a different approach to the tenders concerned, namely of delegating the task of reviewing those

tenders and making a decision to one of the councillors who did not consider that he had a prejudicial interest. On being advised of this arrangement, we took the view that this was a very suitable way of dealing with the problem and might create a happy precedent for the future.

## **6. FUTURE WORK**

- 6.1 For 2008/09, it is clear that we must come to terms with the new initial screening procedures once the new Government regulations have been put in place. We are already actively considering training courses for the Standards Committee members so that we can develop our expertise in this area.
- 6.2 As indicated earlier in this report, we will also be bringing forward proposals to the District Council for changes to our terms of reference and membership to cope with our new responsibilities.
- 6.3 Other than this, we will continue to monitor the Code and in particular the advice contained in the Planning Protocol and where necessary we will be adjusting this according to experience gained. We do hope that the trend in terms of the number of complaints against councillors in the District will continue into the new Council year.
- 6.4 Another element of our work for 2008/09 are the new performance indicators which will be collected by the Standards Board for England which are designed to monitor the effectiveness of the Committee in administering the Code of Conduct and for dealing with complaints. The final details of these performance measures are still awaited but we understand that regular returns will be required to the Standards Board for England by completing electronic templates on the Standards Board for England website. The information collated by the Board will then be published on a regular basis.

## **7. COMPLAINTS AND REGISTRATION OF GIFTS/HOSPITALITY - STATISTICS**

- ... 7.1 Appendices 2 and 3 set out statistical information regarding registration of gifts and complaints received during the year. There were no registrations of gifts and hospitality as from the adoption by the Council of the new Code of Conduct on 28 June 2008, the recording of gifts and hospitality is undertaken in a different way (see paragraph 5.18 above). As a result these statistics will not be published in future.
- 7.2 As we have mentioned in the preceeding section, the Standards Board for England will be producing performance measures for Monitoring Officers and Standards Committees as to the way in which they deal with complaints. We plan to publish that information in our future annual reports. We also note that in the 2007 Act there is a reference (the detail of which is still to be developed) that any dissatisfied party to the complaints process may in the future be able to complain to the Local Government Ombudsman regarding injustice as a result of our action. We await developments in that area with interest.

## **8. CONCLUDING COMMENTS**

- 8.1 We emphasise again that any member of the Council in the District who has concerns about Code of Conduct issues, is always welcome to speak to the Monitoring Officer, her staff or any member of the Committee. We emphasise our view stated on many previous occasions that the best way of approaching the pitfalls of the Ethical Framework for elected members is to seek advice at as earlier stage as possible and to remain vigilant at all times.

Mary Marshall (Independent Member) (Chairman)  
Parish Councillor Mrs Daphne Borton  
District Councillor Mrs Penny Smith  
Town Councillor Brian Surtees (Parish Deputy)  
District Councillor Mrs Janet Whitehouse  
Grenville Weltch (Independent Member)  
Murray Wright (Independent Member)