

1. INTRODUCTION

- 1.1 This is the seventh Annual Report of the Epping Forest District Standards Committee covering the municipal year 2008/9. The aim of this report is to describe some of the issues which have arisen since our last report and also likely future developments.

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) three parish representatives (Parish Councillors Daphne Borton, Jason Salter and Brian Surtees) who are nominated by the Epping Forest Association of Local Councils; and

(c) three District Councillors: during 2008/9 these were Councillors Stephen Murray, Penny Smith and Brian Rolfe who were each appointed by the District Council.

- 2.2 The Standards Committee continues to be supported by Colleen O'Boyle (Solicitor to the Council and Monitoring Officer), Ian Willett (Deputy Monitoring Officer and Assistant to the Chief Executive), Graham Lunnun (Allegations Determination Manager and Assistant Director (Democratic Services), Simon Hill (Complaints Filtering and Monitoring Officer and Senior Democratic Services Officer).

3. CHANGES IN MEMBERSHIP

- 3.1 We mentioned in our 2007/8 report that Mary Marshall, a founder member of the Committee had succeeded Dr Derek Hawes as Chairman of the Committee. At our July 2009 meeting she was reappointed for a further year.
- 3.2 During 2008/9, the constitution of the Committee changed. This resulted in one additional Councillor and two Parish Council representatives being added to the membership. This results from the new process by which Standards Committees must deal with complaints against Councillors concerning breaches of the Code of Conduct. This is discussed further below.
- 3.3 Councillor Janet Whitehouse had left the Standards Committee in May 2008 and two new members were appointed to accompany Councillor Penny Smith, namely Councillors Stephen Murray and Brian Rolfe. The number of Parish Council representatives was increased to three and we were happy to welcome back to the Committee Jason Salter who had been a past member. In addition, Parish Councillor Daphne Borton, who had previously been a member of the Committee as a District Councillor assumed the role of Parish Representative along with Councillor Brian Surtees who had previously been a Deputy Parish Representative and has now assumed full committee membership.
- 3.4 In 2008/9, for the first time, we appointed a Vice Chairman which we felt was important in view of the increased number of meetings that Standards Committee members were being obliged to attend. We are happy to say that we appointed Grenville Weltch to the office of Vice Chairman. He, like Mary Marshall, is a founder member of the Committee.

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 statutory requirements are set out in Article 9 of the District Council's Constitution and also in a number of Council Protocols. Continuing advice by the Standards Board for England has also shaped the work of the Committee.
- 4.2 Since 2000, the duties of the Committee have covered 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, conducting investigations into and adjudications on some complaints and giving advice on ethical issues as they arise. The Committee is also responsible for granting dispensations from the effect of prejudicial interests in some limited circumstances in accordance with statutory requirements.
- 4.3 The Local Government Act 2007 heralded a major change in the terms of reference of the Committee. Principal among these changes was the Committee's new responsibilities for:
- (a) carrying out initial assessments of all complaints received and determining those which will be investigated;
 - (b) dealing with requests for reviews by complainants against initial assessments which indicate that no investigation will be conducted; and
 - (c) an enhanced role in adjudicating on the results of investigations when they take place.
- 4.4 In addition, the Standards Committee has been given a new responsibility to deal with questions relating to political restrictions and appeals by staff against "politically restricted" designation of their posts.
- 4.5 In July, the Council adopted our constitutional proposals in relation to Article 9 so as to reflect these new functions and to set out the terms of reference of three new Sub-Committees which will deal with the various stages of the complaints process. These new responsibilities relate to the District Council and the 24 Parish and Town Councils in the District. We will also continue with our non-statutory roles of advising the District Council on any of its protocols set out in the Council's Constitution and giving general or individual advice to Councillors about the Ethical Framework.

5. THE YEAR IN REVIEW

- 5.1 This section of the report outlines the main activities of the Committee over the past Council year (2008/9). Each section reflects the main elements of the current terms of reference.

Review of Ethical Framework

- 5.2 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 for Parish and Town Councils to adopt the revised code.
- 5.3 During the year we considered a further Government consultation paper on changes to the Code. We are satisfied that the proposals do not change the fundamentals of

the Ethical Framework and are more by way of clarifying some aspects which have caused problems of interpretation since the previous change. Of particular note are:

- (a) changes to the definition of “official capacity” of Councillors to which the Code applies;
- (b) the definition of “criminal convictions” which can cause breaches of the Code in some circumstances; and
- (c) definition of "close associates" and relatives.

Although the Committee has commented on some of the proposed changes, the Government has yet to implement its preferred alterations. We will of course be reporting back to the District Council and the Parish and Town Councils once we are clear about the shape of the new Code.

Local Government Act 2007

- 5.4 This Act became law in December 2007. A whole chapter of the Act was devoted to the role of Standards Committees and the Code of Conduct. These provisions change the pattern of complaint handling in respect of Code of Conduct cases.
- 5.5 All complaints are now referred to the Monitoring Officer/Standards Committee for an initial screening to establish whether an investigation should be carried out. The process of carrying out investigations, the adjudication on the results and applying penalties where necessary is now carried out locally. Previously, the initial screening of complaints and a substantial number of investigations were conducted by the Standards Board for England. Some of those complaints were, however, already being referred to Standards Committees for local adjudication only or for local investigation and local adjudication.

Initial Screening of Complaints

- 5.6 Before these changes came about, we had agreed arrangements for officers to assume clearly defined roles for handling of complaints. These roles were designed to separate the various officer responsibilities so that each stage of the process is not compromised by conflicts in the roles of the officers involved. For instance it would undermine the process if an officer who had advised a Councillor on the Code of Conduct is then able to investigate a complaint resulting from that advice as this would effectively mean that they would investigate their own advice.
- 5.7 However, the new statutory requirements mean that the Standards Committee members themselves must carry out an initial screening of complaints to decide whether or not an investigation of a breach of the Code of Conduct is justified. Furthermore, complainants now have the right to request a review of a decision not to investigate at a separate Reviews Sub-Committee of the Standards Committee.
- 5.8 Our proposed changes to Article 9 of the Constitution which have been agreed now create three separate Sub-Committees so that the various roles of officers and members are separated as far as possible. This will ensure that the system itself can withstand a challenge. The new Sub-Committees are as follows:
 - (a) Assessments Sub-Committee - initial screening of complaints;

(b) Reviews Sub-Committee - to deal with requests for reviews by complainants where no investigation was ordered by the Assessments Sub-Committee; and

(c) Adjudications Sub-Committee - holding hearings on investigated complaints and applying penalties where necessary.

5.9 It will be seen from this structure that the number of members on the Standards Committee had to be increased in order to provide 9 Councillors from which could be drawn 3 separate sub-committees of 3 members.

Government Consultation

5.10 As we have indicated above, we responded to a Government consultation document which is the forerunner to further changes in the Code of Conduct. A copy of our response to the Department for Communities and Local Government is attached as Appendix 1 to this report.

Promoting the Code and its Values and Training

5.11 The Committee has regularly held training courses in the Code of Conduct and in the Planning Protocol since we were first established. In 2008/9 two courses were held, one on each topic and these were open to both Parish and Town Councillors as well as District Members. Normally these courses are held early in the new Council year, specifically targeted at newly-elected members of the Council. However, as there are few Parish/Town Council or District Council elections this year we have deferred those training courses until later in the municipal year by which time we hope to have received details of the new Code of Conduct. We remain available however to provide training on an interim basis where requested.

5.12 In relation to the Planning Protocol: as this is so closely linked to the Code of Conduct, we are also intending to defer further training on this document until the details of the new Code are known. We are also currently conducting consultation on the Planning Protocol on a number of operational aspects and once we have completed that review and adjusted the Protocol for any changes in the new Code of Conduct, we will run the normal training course later in the year.

Adjudicating/Investigating Complaints Against Elected Members

5.13 Appendix 2 to this report sets out the current listing of complaints being handled by the Standards Committee and its officers. We draw to the attention of Council the following points:

(a) of the 13 complaints, four have been investigated or are due to be investigated;

(b) of the four investigations, two have been completed and adjudications held;

(c) of the remaining two investigations, one has been completed and is due to be submitted to an Adjudication Sub-Committee while the other investigation is due to commence shortly;

(d) of the nine complaints where an initial assessment resulted in a finding of 'no investigation', four have subsequently been the subject of requests for reviews by complainants;

(e) of those four requests for reviews, one was successful and has resulted in an investigation, one is pending and two were unsuccessful;

(f) of the 13 complaints, three related to District Councillors and 10 to Parish and Town Councils;

(g) of the 10 complaints against Parish and Town Councils, eight related to Matching and Nazeing Parish Councils;

(h) Of the 10 Parish Council complaints, all were by one Parish Councillor against another.

5.14 We have drawn a number of conclusions from these statistics. Firstly, the number of applications having been at a low level for many months has suddenly jumped to the present totals. Bearing in mind the preponderance of cases which emanate from two Parish Councils, it seems to us that there could be circumstances of those two Parish Councils, which might explain the current level of complaints. There may be a trend towards Councillors attempting to use the Code of Conduct to further internal debates. There is no doubt in our minds that the number of complaints currently being received is placing a strain on the Council's staffing resources to meet the statutory requirements.

5.15 On the question of "member on member" complaints, we had occasion in one case to refer a complaint to the Standards Board for England. This is an option which is available to Standards Committees in particular circumstances where for a variety of reasons it is unlikely that an investigation can be effectively carried out at a local level. In the case in question, the Standards Board for England decided that no investigation was necessary following their initial assessment. The Standards Board for England made one or two pertinent comments about "member on member" complaints which we reproduce below:

"In the course of their duties members are likely to encounter occasional ill-considered or rude commentary. We (the Standards Board for England) agree that this is inappropriate and unprofessional and on occasions may amount to a potential breach of the Code of Conduct which requires members to treat others with respect.

However, we also consider that the threshold for alleged "member on member" disrespect is higher than disrespect towards the public or officers. Elected members' responsibilities are chiefly to serve their community and not to invest time in personal disputes".

5.16 The Monitoring Officer has reported these comments to us at a recent meeting and we feel that they fully justify the robust approach being taken by Assessments Sub-Committees in the initial assessment of complaints. It is worth bearing in mind that of those complaints with which we have had to deal over the last year only three came from members of the public. These all related to District Councillors.

Complaints Procedures - Further Work

5.17 In January 2009, we asked the Monitoring Officer and her staff to review the procedures we have been operating in regard to complaints. We are due to consider these again at the July meeting of the Committee but one point which has come to light is that there seems now to be a fourth officer role in the complaints process. This is the advice that needs to be given to potential complainants about how to complete the complaint form. Up to now this role has tended to emerge seamlessly

from the process of giving advice on the Code of Conduct where an officer having given such advice to a Councillor, can then fairly easily be in a position where he or she is giving advice to a complainant on the same matters. Part of our review will be aimed at looking at ways in which these roles can be differentiated.

- 5.18 We have also asked for a review of some of the template letters and other documents provided by the Standards Board for England which seem to us at times to be less than clear to complainants and Councillors.

Giving Advice on Ethical Issues

- 5.19 In May 2008 we were approached by Waltham Abbey Town Council regarding the possibility of a dispensation for Town Councillors who would be making a decision on the co-option to a vacancy. The difficulty which the Town Council found was that the applicants were so well known to many of the Town Councillors that there was a doubt whether the quorum for the relevant meeting could be maintained. We were happy to issue determinations to those Town Councillors but found ourselves in some difficulty because each of them quoted the same reasons.
- 5.20 With this in mind we have given further advice to Town and Parish Councils about how such applications should be made in future. We have said that blanket dispensation applications should not be the case and that instead we wish each member to use a new pro forma to make their application and give their reasons in their own words. It will be possible to distinguish the various grounds being quoted by individual Councillors more easily.
- 5.21 We subsequently received a report back on the actions taken by Waltham Abbey Town Council in this regard, having set a time limit during which the dispensation would apply.

6. FUTURE WORK

- 6.1 We have mentioned already that during 2009/10, we will be completing a review of the Planning Protocol. We will also be responding to the new Code of Conduct when this is published by the Government and we will also be reviewing our procedures for dealing with complaints.
- 6.2 For the first time in 2009/10, we are holding a training course in the complaints process. This makes use of the gap in the training programme created by the deferment of the Code of Conduct and Planning Protocol training courses. This course is aimed to inform members about how the complaints process operates as it can be a confusing and also stressful experience for those members who become involved. We remain of the view however that it is far preferable for members to be careful about declaration of interests and their conduct with other Councillors and the public so that they do not become involved in the complaints process.

7. PERFORMANCE REVIEW

- 7.1 From April 2008, the Standards Board introduced a new system for monitoring the performance of Local Assessment Sub-Committees. The Board has set a target for complaints to be heard within 20 working days of receipt. The Assessments Sub-Committee has therefore had to meet on five occasions in 2008/9 and has handled 13 complaints against Councillors.

- 7.2 The Standards Board has also placed a new requirement on Monitoring Officers to update a computerised case progress monitoring system which is designed to keep track of active complaints. The Monitoring Officer is also required to compile a quarterly return to the Standards Board on active cases.
- 7.3 From April 2009, the Standards Board is also collecting information from Standards Committees in the form of an annual return. This return covers the following information:
- (a) arrangements supporting the Ethical Framework in Councils;
 - (b) questions about protocols for member/officer relations;
 - (c) the existence of mechanisms for dealing with member/member and member/officer disputes;
 - (d) relations between the Chairmen of Standards Committees with the Chief Executive, the Monitoring Officer and the Leader of the Council;
 - (e) promotion of the Committee's work; and
 - (f) the general activities of the Committee including training.
- 7.4 This annual return is also in the form of an online questionnaire, similar to the quarterly returns mentioned above.
- 7.5 During 2008/9 there were five meetings of the Standards Committee, five meetings of the Assessments Sub-Committee, two meetings of the Reviews Sub-Committee and one meeting of the Adjudication Sub-Committee. Other meetings of the Reviews and Adjudication Sub-Committees are also pending.
- 7.6 We will be giving attention to the matters raised under item (d) above as these may not be fully developed at present.

8. BUDGETS

- 8.1 We have already mentioned in this report the effect of the new complaints regime on staffing resources. All of this additional work has been absorbed by certain key officers of the Council without additional staff. It is also fair to say that the members of the Standards Committee have also incurred a substantial additional workload in terms of their involvement in the complaints process. We will be monitoring carefully the support we need to fulfil our statutory roles.
- 8.2 We have also been thinking about the costs of our activities in other ways. We have asked that in future when investigations are conducted in house (usually by the Deputy Monitoring Officer) that he should operate a system of time recording so that a notional cost of these investigations can be arrived at. This is merely an extension of what has to happen in some cases when external investigators are engaged.
- 8.3 In 2008/9 it was clear that there was no officer in house who could undertake two investigations because at various times all had been involved in discussions which had led to the complaint. One external investigation engaged by the Council at a cost of £2,400 to complete the review. One other investigation is now being referred to external investigation and the costs quoted are higher. The current working

budget which we have at our disposal is £5,400. This covers not only the cost of external investigators but training courses.

8.4 There are two points which arise here:

(a) we see the cost of external investigations and the likely cost of internal investigations as every justification for a very robust approach which the Assessments Sub-Committee is now taking to complaints; and

(b) that if the number of complaints received continues to be at the current rate, there is every likelihood that the Monitoring Officer will have to come forward with a request for additional funding in order that the Council can discharge its statutory responsibilities.

8.5 Although officers try very hard to differentiate their various roles so as to retain the ability to investigate in house, it is clear to us that in an authority of this size we will have to have recourse to external investigators to retain the credibility of the process.

9. CONCLUDING COMMENTS

9.1 We would like to emphasise 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 repeat our view stated earlier in this report and in previous annual reports that the best way of complying with the ethical framework is to seek advice at an early stage as possible and to remain vigilant at all times in dealings with the public, other Councillors and officers.

Independent Members

Mary Marshall (Chairman)
Grenville Weltch (Vice-Chairman)
Murray Wright

Parish Council Representatives

Daphne Borton
Jason Salter
Brian Surtees

District Councillors

Stephen Murray
Brian Rolfe
Penny Smith