

**EPPING FOREST DISTRICT  
STANDARDS COMMITTEE**

**NINTH ANNUAL  
REPORT  
2010/11**

## **CHAIRMAN'S FOREWORD**

I wish to thank the members of the Standards Committee, together with the Monitoring Officer and her team, for all their support and hard work throughout the year. I believe and trust we have dealt with all complaints in an efficient, professional and fair manner, and credit is due to all those involved in the process.

As a newcomer to the Standards Committee, I have been struck by the amount of resources consumed in investigating many complaints. While it is inarguably correct that we follow the statutory procedure, it is rare that the initial decision reached is then overturned by subsequent appeals. There is a balance between fair treatment of all parties and the resources spent in investigating complaints more than once, and I feel that sometimes this balance is upset as complainants have nothing to lose if their original complaint is not answered to their satisfaction: They therefore follow the process through, maybe in hope rather than expectation that a future panel will find in their favour.

I could also question the motivation for a number of the complaints received, which appear frivolous or 'tit for tat' in nature, which does no credit to the people involved.

As is discussed below, the Standards Committee framework will change should the Localism Bill become law in its current format. Councillors are asked to carefully consider how they wish the public's expectations on conduct of councillors to be managed going forward. One of the strengths of the current process is that it is consistent, thorough and has a degree of independence. As it stands, the Localism Bill will put ownership of conduct matters with the local authority, with no national standards to follow.

Richard Crone  
Chairman  
Epping Forest District Standards Committee 2010/11

## **1. INTRODUCTION**

- 1.1 This is the ninth Annual Report of the Epping Forest District Standards Committee covering the municipal year 2010/11. The aim of this report is to describe some of the issues which have arisen since our last report and likely future developments.

## **2. THE COMMITTEE**

- 2.1 The 2010/11 membership of the Standards Committee is as follows:
- (a) three independent members (Richard Crone Jason Guth and Murray Wright);
  - (b) three parish representatives (Parish Councillors Daphne Borton, Jason Salter and Brian Surtees) who were nominated by the Epping Forest Association of Local Councils; and
  - (c) three District Councillors: Councillors Mrs A Grigg, Mrs P Smith and Mrs J Whitehouse.
- 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), and Simon Hill (Local Assessments Officer and Senior Democratic Services Officer).

## **3. CHANGES IN MEMBERSHIP**

- 3.1 As reported in our 2009/10 report Grenville Weltch left the Committee on 1 August 2010 and we were grateful to him for deferring his retirement until existing casework in which his experience was important had been concluded. His seat on the Committee was taken by Jason Guth, who jointed Richard Crone as a second new member, the latter having succeeded Mary Marshall as member and Chairman. Jason Guth was appointed as the new Vice Chairman.
- 3.2 Following the District Council's Annual Meeting in May 2010, Councillors Penny Smith and Janet Whitehouse rejoined the Committee as District Council representatives. We also welcomed Councillor Anne Grigg as the successor to Councillor Rolfe.
- 3.3 We are sorry to record the death of one of the Committee's long-serving Parish representatives: Jason Salter. Jason had been a member from 2001 when the Committee was first established until 2007 and again from 2009 until his death. He was always an active participant in the work of the Committee often with robust views but a commendable willingness to contribute to our discussions.
- 3.4 Jason Salter was succeeded by Councillor Mrs Sheila Jackman, of Ongar Town Council.

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

- 4.1 The terms of reference of the Standards Committee are set out in the Local Government Act 2000 and various Government regulations. These statutory requirements are also set out in Article 9 of the District Council's Constitution and in a number of Council protocols. The Standards Committee in undertaking its functions, has continued to follow the advice given by the Standards for England.

- 4.2 The duties of the Committee continue to cover a number of statutory elements including proposing and amending the Code of Conduct for the District and Parish/Town Councils, promoting the Code and its values, providing training, responding to consultations, investigating, reviewing, adjudicating on complaints and also giving advice on ethical issues affecting Councillors as they arise. The Committee remains responsible for granting dispensations from the effect of prejudicial interests and for politically restricted staff posts.
- 4.3 In 2010/11, we continued to deal with the complaints which we referred to in last year's report. Sub-Committee arrangements established in 2008/9 to deal with the complaints process have continued to operate and over the period of the last 12 months, there have been no new changes to the role of the Committee.

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

- 5.1 This section of the report outlines the main activities of the Committee over the past Council year. Each section reflects the main elements of our terms of reference.

### **Review of Ethical Framework**

- 5.2 We referred in our last Annual Report to a Government Consultation Paper on further changes to the Member Code of Conduct. In June 2007, Councils adopted a new Code of Conduct, but shortly afterwards, a new consultation was launched by the Government of the day to make further clarifications to its provisions, following wide consultation.
- 5.3 The General Election in May 2010 resulted in a new Government being formed and its clear from their pronouncements that the current arrangements will be radically altered.
- 5.4 In our last Annual Report we drew attention to changes which were being discussed by the new Government in regards to a reduction of so called "quangos", including Standards for England. Since then the Government has introduced legislation entitled the "Localism Bill" which has the following main elements:
- (a) the conduct principles governing the activities of Councillors and which underpin the present code of conduct will be abolished;
  - (b) the model code of conduct which applies to all local authorities will be abolished;
  - (c) Standards for England will be abolished and none of its functions will be transferred elsewhere;
  - (d) the First Tier Tribunal (formerly the Adjudication Panel) will lose its jurisdiction over local authority members;
  - (e) registration and declaration of personal interests by Councillors will continue and they will be prohibited from using their position for personal gain;
  - (f) wilful failure to comply with the requirements under (e) above would constitute a criminal offence;
  - (g) the requirement for local authorities to adopt a model code of conduct and for Councillors to abide by the Code will both be abolished;

- (h) local authorities will be free to adopt their own voluntary code;
- (i) the requirement for local authorities to maintain a Standards Committee will be abolished but they may establish a voluntary committee to consider complaints about the conduct of elected or co-opted Councillors;
- (j) if a voluntary Standards Committee is established, local authorities may be able to censure members but could not suspend or disqualify.

5.5 The Bill is scheduled to receive the Royal Assent at the end 2011 or thereabouts. Until the new legislation is fully in effect, the present arrangements will continue. The Bill is also thought likely to increase the influence of the Local Government Ombudsman over complaints against Councils, including a new duty on Councils to implement the Commissioner's findings. There are indications that further changes could be applied in Parliament during the passage of the Bill, including a new code and/or a requirement for a statutory Audit & Governance Committee with an independent Chairman and majority independent membership whose responsibilities might embrace some of the present role of Standards Committees.

5.6 This raises some issues concerning the stance the District Council and Parish/Town Councils intend to take on:

- (a) whether voluntary codes of conduct should be pursued;
- (b) how complaints against Councillors over their conduct are to be dealt with in future;
- (c) whether a District Standards Committee is desirable.

It seems that a voluntary complaints system assumes that a code would be in being against which to measure conduct and also provision for responsibility for assessing misconduct (if proven) and possible public censure.

5.7 We have considered the issue of whether this Standards Committee should continue and our view is that, once the provisions of the legislation are set, we may wish to bring recommendations forward so that the Council decides how to proceed.

5.8 The new duty to register interests and for members of Councils not use their positions for personal gain will depend heavily on what constitutes "wilful" behaviour as opposed to simple mistakes or misunderstandings. Clearly a process for dealing with those matters will need to be devised by the Government.

5.9 We referred last year to the review of the Planning Protocol. No further work on this has been carried out in view of the change in Government which will see the disappearance of the present code and a new standards regime. There is some uncertainty about the final format of the Localism Bill and this will clearly influence the content of the planning protocol. The latter will also be affected by the Bill's intention to clarify rules on predetermination, pre-disposition and bias.

#### **Bias, Pre-disposition and Pre-determination**

5.10 The Monitoring Officer has drawn our attention to another aspect of the Localism Bill which will influence the Planning Protocol and member conduct. This relates to the threefold issues of bias, pre-disposition and pre-determination in Council

decision-making. Such matters are not exclusive to the conduct regime and the Bill may challenge the accepted legal position that, in the event of actual bias (“closed mind”) or any appearance of being so, the member concerned should not take part in the decision. Such a finding could generally render decisions unlawful and render the Council liable for costs and to reputational damage.

5.11 The Monitoring Officer pointed out that the Bill may seek to clarify the legal position by providing that an indication of views by a Councillor on a particular matter is not to be taken as evidence of a “closed mind”. The kind of situation covered by this might be:

- (a) campaigning;
- (b) discussions with constituents;
- (c) expressing views on local issues and seeking support.

5.12 These are matters of which the Council will need to take in account in the future.

### **Dispensations and Politically Restricted Posts**

5.13 No matters under this item of business have required our consideration in the last year. However, in considering the future of the Standards Committee it will be necessary to ensure some mechanism for dealing with such applications remains.

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

... 5.14 Appendix 1 to this report sets out an annual statement of the complaints received by the Standards Committee during the year. Although only one substantive case has reached Assessment as a new case, other less focussed ‘complaints’ have arisen and dealt with by officers by way of advice. This year has also seen the conclusion of three matters, the subject of previous report, that were subject to formal investigation. Case numbers 9/2009, 1/2010 (Local Assessment) and 4/2010 (Hearing) were all found not to have amounted to a breach under the terms of the Code of Conduct.

... 5.15 Appendix 2 sets out a statement of the costs of conducting investigations. By way of explanation, because Epping Forest District Council has a relatively small team of officers handling complaints, it is not always possible, both in terms of the integrity of the process or in terms of the workloads of the individuals concerned, for all investigations to be carried out in house. Sometimes, it is necessary to use external investigators if the Deputy Monitoring Officer (who usually carries out these investigations) is unable to do so because he has been involved in the case previously or because his workload dictates that an additional investigation cannot be undertaken.

5.16 Appendix 2 shows the costs of these external investigations which are based on reliable consultancy figures. Internal investigations are costed on time allocation for the Deputy Monitoring Officer plus other incidental costs such as printing, photocopying. Suffice it to say that all complaint investigations are expensive and have many hidden costs if conducted internally.

5.17 As a guide, the two internal investigations (based on time allocations) completed after the year in question were both costed at around £3,700.

## **6. NAZEING PARISH COUNCIL – DIRECTION FROM STANDARDS FOR ENGLAND**

- 6.1 Work pursuant to the Standards for England Direction to the Monitoring Officer continued during the year.
- 6.2 The Direction to the Monitoring Officer was to take other steps in lieu of complaint investigations to try to resolve the differences within the Parish Council through other action. The Direction was mutually agreed with Standards for England because it was already the view of the Monitoring Officer and the Deputy Monitoring Officer that continuing complaint investigations would not help the situation which exists within the Parish Council.
- 6.3 The Direction consisted of four elements:
- (a) training in the Code of Conduct with particular reference to treating others with respect;
  - (b) mediation and conflict management for two individual Councillors on Nazeing Parish;
  - (c) general conflict resolution training for all members of the Parish Council;
  - (d) training and review of Standing Orders so as to achieve better conduct of Parish Council meetings.
- 6.4 The actions required to comply with the Direction were divided into two programmes. The first was concerning standing orders, management of meetings and related issues on member behaviour. Two training courses were held out of five which were planned, after which the trainer made representations to the Monitoring Officer that the training was unlikely to achieve the objectives set under the Direction. We advised the Monitoring Officer to terminate the programme as soon as possible because we no longer felt that the costs to be incurred could be justified. It was our view that the likelihood of a positive outcome was very unlikely.
- 6.5 We asked the trainer to provide a written assessment of the courses and this was conveyed to Standards for England. The Directive has subsequently been cancelled.
- 6.6 The second phase of training had not progressed beyond initial discussions and further work was terminated. For both elements, the Council incurred fees of £1,500. Looking back on the Direction, this seemed to be a genuine attempt on the part of Standards for England to improve relations and operations within the Parish Council but however high-minded the attempt, the level of spending was not justifiable in our view.

## **7. CONCLUDING COMMENTS**

- 7.1 We would like to emphasise that any member of the Council in the District who has concerns about the present Code of Conduct is always welcome to speak to the Monitoring Officer, her staff or any member of the Committee. We repeat our views as stated in previous reports that the best way of complying with the ethical framework is to seek advice at as early a stage as possible and to remain vigilant at all times in dealings with the public, other Councillors and officers.
- 7.2 We feel that the Council needs to address the new ethical framework once the Government's new legislation is published and we will facilitate that discussion by reporting to the Council so that the Council can decide how to proceed.

**Independent Members**

Richard Crone (Chairman)  
Jason Guth (Vice-Chairman)  
Murray Wright

**Parish Council Representatives**

Daphne Borton  
Sheila Jackman  
Brian Surtees

**District Councillors**

Anne Grigg  
Penny Smith  
Janet Whitehouse

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