

1. INTRODUCTION

- 1.1 This is the Fourth Annual Report of the Epping Forest District Council's Standards Committee covering the municipal year 2005/6. The aim of this report is to describe some of the issues which have arisen since our last report and likely future developments.
- 1.2 Current membership comprises:
- (a) three independent members – Dr Derek Hawes, Mary Marshall and Grenville Weltch;
 - (b) one parish representative (Jason Salter)(plus a deputy – Mr K Percy) nominated by the Epping Forest Association of Local Councils;
 - (c) two District Councillors: during 2005/6 these were Councillors Mrs D Borton and Mrs P Smith.
- 1.3 The Standards Committee is supported by Colleen O'Boyle (Solicitor to the Council and Monitoring Officer) together with administrative support from officers of the Research and Democratic Services Unit.
- 1.4 Dr Derek Hawes was re-elected as the Chairman of the Standards Committee in 2004 and serves until June 2007.

2. TERMS OF REFERENCE

- 2.1 The Terms of Reference of the Committee are defined by the Local Government Act 2000 and various Government regulations. These are also set out in the Council's Constitution. A number of Council protocols and continuing advice by the Standards Board for England also shape the work of the Committee.
- 2.2 The Committee's duties cover the following statutory elements:
- (a) proposing a Code of Conduct;
 - (b) monitoring or revising the Code in the light of experience;
 - (c) promoting the Code and its values;
 - (d) providing training;
 - (e) investigating complaints against elected members as referred by the Standards Board for England;
 - (f) adjudicating on complaints against elected members as referred by the Standards Board for England;
 - (g) giving advice on ethical issues as they arise; and
 - (h) granting dispensations from the effect of prejudicial interests in accordance with the statutory provisions.
- 2.3 The Standards Committee exercises these statutory functions in relation to Epping Forest District Council and the 24 Parish and Town Councils in the District. In addition to these statutory roles, the Committee has also been asked by the District Council to advise on various protocols set out in the Council's Constitution.

3. THE YEAR IN REVIEW

- 3.1 This section of the Report outlines the main activities of the Committee over the last Council year (2005/06), each section reflecting their main terms of reference.

Review of Ethical Framework

- 3.2 The Standards Board for England and the Government have been engaged on a review of the Code of Conduct and other aspects of the ethical framework for some time now. In April 2005 we responded to a consultation document from the Standards Board for England regarding a number of matters. A copy of our response is attached as Appendix 1. This consultation, we judge, arises from a number of criticisms and concerns about the way the ethical framework currently operates and also the experience gained over the five years that it has been in operation. We will be advising the Council in due course on the results of this review which may well result in a revised Code of Conduct and revised procedures for dealing with complaints etc.

Proposing/monitoring or revising Codes of Conduct

- 3.3 Other than changes that may result from the current review of the Code, the Committee has not been asked to deal with any changes to the Codes of Conduct operated by District and Town/Parish Councils. Naturally, if any Council is seeking to make such changes, they must contact the Standards Committee as we have a statutory role in advising on any changes sought.

Promoting the Code and its Values/Training

- 3.4 In 2005/6, the Committee continued to sponsor training courses for District and Parish Council members. Because in 2005, the Local Government elections principally concerned Essex County Council, there was not the need to hold the same number of courses as in previous years. Thus, two courses were held, one in the Code of Conduct and one in the Planning Protocol. For 2006/7 we will be reverting to the previous pattern of two courses in the Code and two in the Planning Protocol during the year. One pair of courses will be held in May in order to advise the new intake of councillors and a second later in the year as a refresher.
- 3.5 We continue to urge Councillors to take advantage of these courses and ensure that they are always fully up to date and mindful of their responsibilities. Once a new Code of Conduct has been put in place, it will be very important for as many Councillors as possible to be updated on the changes which occur.

Adjudicating/Investigating Complaints Against Elected Members

- 3.6 We reported last year that the necessary framework of regulations had been put in place to allow local adjudication and investigation of complaints against elected members to take place through the Committee.
- 3.7 During the year, two adjudication cases were referred to the Monitoring Officer by the Standards Board for England.

- 3.8 The first involved a review of a report of an Ethical Standards Officer, which found that a breach in the Code of Conduct had occurred. Our task was to assess the facts of the case, whether a breach of the Code had occurred and any penalties which should be applied. Our Adjudication Sub-Committee held a formal hearing on this case. The facts and the finding of a breach of the Code were upheld and a suspension of three months applied to the member concerned.
- 3.9 Later in the year the second reference was received from the Standards Board for England. This was a planning case and the review of the Ethical Standards Officer's report led us to believe that a breach of the Code of Conduct had occurred but the Adjudication Sub-Committee determined that there was no further action required.
- 3.10 Two other cases are currently pending, both of which are for local investigation and adjudication. It is likely that these will be reviewed during the early part of 2006/7.

Complaints - The Future

- 3.11 There is every indication that the Standards Board for England intends in future to refer as many cases as possible for local adjudication and investigation. Our view is that this may have implications for Epping Forest District Council in two important respects. Firstly, the amount of officer time which will have to be devoted to the investigation and adjudication process is very significant. Secondly, there is a wider issue about the conflicting roles of officers becoming a problem. In an authority the size of Epping Forest District Council, it is very difficult to keep the roles of Monitoring Officer (as adviser to the Committee), the Investigations Officer and Notifications Officer distinct. They each will be giving advice to councillors, which may rule them out of the formal process of investigation and adjudication. The Council has to ensure that the process of adjudication and investigation is not open to challenge on the basis of such prior involvement.
- 3.12 This problem is borne out by one case where it has been necessary for a Monitoring Officer from another Council to be brought in in order to undertake an investigation because the Deputy Monitoring Officer at the Council (who would normally carry out the investigation) has in fact advised the Councillor on the matter which is now the subject of a complaint.
- 3.13 The Local Government Act 2000 makes it a statutory responsibility for the Council to ensure that the Monitoring Officer has sufficient resources (of all kinds) to carry out the responsibilities allocated under the Local Government Act 2000. We are aware that there was an increase granted in our operational budget for 2006/7 of £3,000 but the Council should bear in mind that the Council could well incur additional costs to engage external agencies to carry out investigations if its own officers have already been involved.
- 3.14 Although one current case is being dealt with on a reciprocal basis, there is no guarantee that this will always be possible. We ask that the District Council bear this in mind in their future budget planning.

Giving Advice on Ethical Issues

- 3.15 We have not been approached by any Councillor or political group for specific advice on the Code of Conduct during the year. However, our Chairman asked for an opportunity to meet Group Leaders to discuss the implications of the two cases on which an Adjudication Sub-Committee had made determinations. Our Chairman made the point that it was important that members sought advice, made sure that they were up to date on the requirements of the Code and carefully thought through their position on issues which arise. He commended this to Group Leaders as a way

of avoiding complaints and the stress experienced which inevitably accompanies them. We were subsequently advised that Group Leaders had initiated discussions regarding support for members who are under investigation. We also understand that provision has been made in the Member Training Programme for 2006/7 for the basic processes relating to investigation and adjudication to be explained to members so that they are more aware of the process and therefore less intimidated by it.

Planning Protocol and Councillors Serving on Outside Organisations

- 3.16 During the year we received further advice from the Standards Board for England about Councillors serving on external bodies and the question of lobbying of and by Councillors. We were due to review the Planning Protocol, which attempts to guide members through the possible conflicts of interest which arise in the planning process and we looked again at the advice we had previously issued concerning external organisations.
- 3.17 Planning agents, planning professionals and all members of the Council were consulted about our proposed revisions to the Planning Protocol and these seemed to be well supported. The protocol has also been reviewed to cover one of two other issues particularly “dual-hatted” councillors where we hope that we have clarified the position for members who serve on more than one Council. The new advice is that provided members of Parish and Town Councils who also serve on District Planning Committees reserve their final position until they see all the details of applications at the relevant Area Plans Sub-Committee meeting, they should feel free to speak and vote at Parish level unless they have another prejudicial interest in the case. We hope that this has clarified the position for the future.

Gifts and Hospitality

- 3.18 We felt that, although the Code of Conduct makes reference to the need to register the acceptance of gifts and hospitality over £25 in value, there was no advice on how to interpret this requirement. The Council has now adopted our Protocol on this subject. We hope this will assist members in making decisions on when to accept and when to register. It covers matters such as how to define a gift or hospitality, when they should be refused and when accepted. We feel that advice either from the Standards Committee or the Monitoring Officer may still be necessary in some cases but the protocol will, we hope, clarify the main considerations to take into account.
- 3.19 This advice has been circulated to Town and Parish Councils and to District Councillors.

Member Facilities

- 3.20 As in the case of gifts and hospitality, we found that no advice was available to members to advise them on their duty under the Code of Conduct to use member facilities in accordance with the policy of the Council. We therefore issued advice to District Councillors and Parish and Town Councils. Whilst we were preparing this document, we were advised that the Council was introducing a new I.T. network, which allows for despatching agenda and minutes etc electronically to members. We were advised that a supplementary Basic Allowance was to be provided to each member of the Council to improve their IT facilities at home so that they could operate within the new system.

- 3.21 As the Council opted not to provide computer equipment directly but to facilitate improvements by an additional basic allowance, the Council has no direct role in ensuring proper use of the facility. However, we have taken the opportunity as part of the Member Facilities Protocol to offer guidance on what is expected of Councillors in their use of IT facilities. Were the Council providing the equipment, a more rigorous regime of policing the use of those computers would undoubtedly have come about but we feel that members should bear in mind at all times that they are public figures and subject to a higher level of public scrutiny as to their use of the internet.
- 3.22 We were appreciative that the Head of ICT at the District Council, Adrian Scott and Simon Hill, the project manager of the electronic network scheme, attended one of our meetings to explain the system.

Granting Dispensations from the Effects of Prejudicial Interest

- 3.23 We received no requests for dispensations during 2005/6.

4. CHIEF FINANCIAL OFFICER

- 4.1 We were grateful to welcome Mr R Palmer, the Council's Head of Financial Services and also the designated Chief Financial Officer to our meeting in October 2005. We were interested to hear his description of the role of the Chief Financial Officer and how this related to the role of the Monitoring Officer. We hope that Mr Palmer will be able to return to the Committee to brief us on how the Chief Financial Officer role is developing.

5. INTERESTS

- 5.1 We have been pleased to see that the registration of member interests are now appearing on the Council's website. This, in our view, can only increase public transparency in how members deal with the Code of Conduct. We have noted that the Monitoring Officer continues to issue annual reminders to all members of the Council of the need to update their registrations and we hope that District, Parish and Town Councillors are vigilant about meeting the 28-day time limit for registering changes. Now that these documents are published on the website it is even more important that these are kept up to date.

6. FUTURE WORK

- 6.1 As we have indicated already, at least two investigations/adjudication cases will be dealt with in 2006/7 and we now consider that we have robust arrangements for dealing with these in the future.
- 6.2 We continue to have some concerns about confidentiality at adjudication hearings and also about the registration form for member's interests where we feel that this could be more 'user friendly' particularly for new members. We plan to undertake further work on these matters in 2006/7 and hopefully will be able to give further advice on this during the year.

7. COMPLAINTS AND GIFTS AND HOSPITALITY - STATISTICS

- ... 7.1 Appendices 2 and 3 set out statistical information regarding registration of gifts and complaints received.

8. THE NATIONAL CONTEXT

- 8.1 Elected members will be aware that the New Ethical Framework was imposed upon local government by statute in the year 2000. It was an attempt to address concerns expressed by the Nolan Committee report into sleaze and poor public perception of politics and politicians at both local and national level.
- 8.2 Unfortunately, as earlier paragraphs of this report make clear, the new system was hampered by very poor implementation: regulations were published late, the rules were modified often and interpretation of the Code of Conduct was amended more than once. But most importantly the whole process was over-centralised and over-bureaucratic; little was left to local standards committees' discretion. The result was more than a little confusing among members nationwide.
- 8.3 As we report above, there has now been an attempt to modify these early approaches and the result, clearly, will be that Standards Committees will be involved more frequently in investigations and adjudications of complaints against councillors.
- 8.4 Inevitably, any sanction imposed upon a Councillor (either by your Standards Committee or the Standards Board for England) which interferes with the function of elected representatives, is worrying and can be interpreted as an unwarranted intrusion in the democratic process. Your committee is aware of this and understands the concern which has been expressed quite widely. Indeed we have no wish to be part of what has been termed "the appointed State". It is a dilemma that must be faced in the wider context of reviving local democracy that underlies the whole purpose of the Nolan Committee reforms and the modernisation of local government.
- 8.5. To some extent the solution lies with Council members themselves. With good leadership at the party political level and assistance to newly-elected colleagues in the ways of the Council, the number of complaints could be minimised. We also note that national statistics show that nearly a third of all complaints are lodged by other members.
- 8.6 It should also be acknowledged that the early performance of the Standards Board for England has led to assertions by some at Westminster that the whole system should be abolished. It is not for the EFDC Standards Committee to comment on that except to say that one of the prime reasons for imposing the New Ethical Framework was to help re-build public confidence in local and national democratic politics, to increase the number of those who utilised the ballot box, and especially to encourage more young people to take an interest in public affairs.
- 8.7 Lord Nolan argued that by asking politicians to conform to a code of conduct and by providing more transparency in the activities of those who put themselves forward for public office, the value of their service to the community would be enhanced. It would be a pity if these objectives were lost in the process of reforming or abolishing the concept of ethical standards of behaviour.

9. CONCLUSIONS

- 9.1 We hope we have now put in place a framework of training and advice, which will equip Councillors to deal with the demands of the Code of Conduct. We see this as our main role.

- 9.2 We would emphasise to all Councillors, whether Parish or District, that the Monitoring Officer and her staff and indeed the Committee itself are always available to assist members with advice on ethical standards issues. We would reiterate that it is far better in our view that advice is sought at an early stage to avoid the difficulties which occur when the public challenges a Councillor as to their conduct occur.

Dr Derek Hawes (Chairman)
Councillor Mrs Daphne Borton
Mary Marshall
Councillor Mrs P Smith
Jason Salter
Grenville Weltch

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