

EAST NORTHAMPTONSHIRE STANDARDS BOARD

Date: 7 December 2011

Venue: East Northamptonshire House, Cedar Drive, Thrapston

Time: 7.30 pm

Present: Graham Blagden (Chairman)

East Northamptonshire Councillors: Glenvil Greenwood-Smith

Town and Parish Councillors: Prudence Goss
Arthur Whittaker

Independent Members: Hilary Daniels

296. MINUTES

The minutes of the meeting held on 21 September 2011 were approved and signed by the chairman.

297. APOLOGIES FOR ABSENCE

Councillors Barbara Jenney, Sue North, Don Campbell and Graham Matthews sent their apologies.

298. DECLARATIONS OF INTEREST

Councillor Glenvil Greenwood-Smith declared a personal interest in the item relating to the request for dispensations as he knew some of the councillors requesting the dispensations.

299. REQUEST FOR DISPENSATIONS

Secondary legislation made under the Local Government Act 2000 empowered the board to consider and, in certain specified circumstances grant, dispensations in respect of members of East Northamptonshire Council and the town and parish councils in East Northamptonshire. Requests had been received for consideration in accordance with the Relevant Authorities (Standards Committee) (Dispensation) Regulations 2002.

The board considered a formal request for a dispensation from eleven members of Rushden Town Council in respect of the continuing discussions on the transfer of public conveniences in Duck Street and Newton Road, Rushden. The board had granted earlier dispensations on the same subject to members of Rushden Town Council on 30 January 2010 and those dispensations had expired on 31 March 2011. The 50% rule was met.

RESOLVED:

That the request for a dispensation in respect of Councillors Marian Hollomon, Barbara Jenney, David Jenney, Richard Lewis, Andy Mercer, Gill Mercer, Steven

North, Sarah Peacock, Ron Pinnock, Robin Underwood and Clive Wood be granted until 31 March 2012 to coincide with the introduction of new dispensation arrangements which will result from the Localism Act 2011.

300. ACTIVITY REPORT OF THE MONITORING OFFICER

A report was received on ethical matters dealt with by the Monitoring Officer since the last meeting. It was noted that 9 enquiries had been recorded from parish and town council clerks and councillors, district councillors and the general public, mainly seeking advice on personal and prejudicial interests. Changes to the town and parish council registers of interest continued as vacancies arise and were filled, and there were 42 currently vacant town or parish council seats. Some 41 parish register of interest forms were outstanding, and the appropriate clerks had been contacted to remind councillors of the need to return completed forms.

Two new complaints had been received since the last meeting and it was hoped to arrange an Assessment Sub-Committee on one of them before Christmas. It had not been possible to complete the outstanding complaint requiring Monitoring Officer action since the last meeting.

The Localism Bill had received Royal Assent on 16 November but the changes to the Standards Rules would not come into immediate effect but were subject to further regulation by the Secretary of State and would probably come into effect on 1 April 2012. The provisions relating to pre-determination would come into effect on 15 January. Significant changes to the future arrangements relating to the Code of Conduct had been made just before the third and final reading of the bill (see minute 231 post). A briefing note on the position had been sent to all District councillors especially emphasising that the current standards regime continued to 31 March 2012.

Training for town and parish councillors on the proposed changes to the planning rules and infrastructure had been given on 29 November. Further guidance and training on all changes would be provided to both district and town and parish councillors before the changes took effect in 2012.

301. THE IMPLICATIONS OF THE LOCALISM ACT FOR STANDARDS ARRANGEMENTS AT EAST NORTHAMPTONSHIRE COUNCIL

The board received and considered a report from the Monitoring Officer relating to the Standards aspects of the Localism Act 2011.

The changes made to the Standards arrangements were as follows:-

- A new duty to promote and maintain high standards of members and co-opted members (section 27 (1))
- An obligation for all Councils (including Town and Parish Councils) to have a code of conduct for councillors (section 27 (2)) which complied with the Nolan Principles (under the Act these were confined to 7, rather than 10, principles, with personal judgement, respect for others, and duty to uphold the law omitted and honesty and integrity made separate principles).
- The Code to include provision, as the local authority considered appropriate, for registration and disclosure of pecuniary and non pecuniary interests.

- The Code must make provision for the completion of a Register of Interests to include those 'Disclosable Pecuniary Interests' defined by regulations and also some other pecuniary interests or non-pecuniary interests (to be defined by the council). These interests would be published on the council's website.
- Failure to register a Disclosable Pecuniary Interest would be a criminal offence.
- A Town or Parish Council could adopt their principal authority's code
- All principal councils (including ENC) to have arrangements to investigate allegations and make decisions on them (including those about town and parish councillors)
- These arrangements to include for the appointment of at least one independent person whose views *must* be sought and taken into account before making a decision on an allegation
- The independent person's views *may* be sought by
 - 1 the authority dealing with an allegation not being investigated
 - 2 a member the subject of an allegation
- The Independent person may not be a voting member of any local Standards Committee.
- The council was statutorily obliged (s28(12)) to publicise its new code of conduct in such a manner as it considered likely to bring it to the attention of persons who live in its area.

Attention was drawn to the key provisions of the Act, with notes highlighting areas for clarification and issues for the council to consider when drafting the subsequent amendments to the council's constitution (see the appendix to these minutes at pages 493 to 497). It was anticipated that, following the making of regulations by the Secretary of State, a draft code would be presented to council with consequential changes to the constitution probably in February 2012.

The board gave preliminary consideration to the issues and questions arising from the enactment of the Standards provisions in the Act. A number of suggestions were made during this consideration and it was acknowledged that the omission of some of the original Nolan principles from the legislation and other aspects of the provisions appeared to conflict with the need to maintain effective and robust corporate governance arrangements and maintain open and transparent government – which could be detrimental in terms of an external audit opinion. It was recognised that a detailed evaluation of the aspects of the new Standards provisions should be undertaken by the Task Group set up under minute 167 of the last meeting to enable firm recommendations to be made on processes and the way forward.

The board took the view that the undermentioned process should be followed to ascertain the wishes of the council and put in place the necessary arrangements to effectively comply with the statutory duty to promote and maintain high standards of conduct by members and co-opted members:-

- Preliminary meeting between the chairman of the board and the Leader of the Council to highlight the issues and questions and gain acceptance of the way forward, including the need, or otherwise, for the Policy and Resources Committee to be involved in the consideration
- Discussion with other Political Group Leaders before the council meeting on 9 January
- Approval to the approach to be taken to be agreed at the council meeting on 9 January, after an update by the chairman of the board

- Discussion with NCALC and representatives of town and parish councils on the best way forward to deal with the new arrangements bearing in mind the new statutory duties in section 27 of the Localism Act 2011.

R17. RESOLVED TO RECOMMEND:

That the approach suggested in the previous paragraph be adopted to enable the council to decide on how it will comply with the new duties and implement the Standards provisions of the Localism Act 2011.

Chairman

Key provisions for Standards arrangements in the Localism Act

Issue	Localism Act Ref.	Requirements	Other comments/ <i>Areas for clarification /consideration</i>
Duty to promote high standards	S27 (1)	All councils must promote and maintain high standards of conduct by members and co-opted members	Includes Town and Parish Councils
Code of Conduct	S27(2)	All councils (including Town and Parish Councils) will adopt a code dealing with the code of conduct that is expected of members of the authority when they are acting in that capacity. Code must be adopted by full Council.	<ul style="list-style-type: none"> • Code no longer applies when appearing to act as Cllrs in their private lives • A Town or Parish Council can adopt their principal authority's code - S27 (3) • A decision is not invalidated by a failure to observe the code during the decision making process – S28(4) • The council must publicise adoption/changes to the Code to bring it to the attention of residents- s28(12) • Cllrs no longer have to sign undertaking to comply with the Code – <i>if no local arrangement how does ENC demonstrate compliance with duty to promote and maintain high standards of councillor conduct</i>
	S28 (1)	The code, when considered as a whole, should be consistent with the seven principles noted in Appendix 1	<ul style="list-style-type: none"> • No model Code – ACSeS have a model which will be revised in line with latest provisions of Act – not endorsed by NCALC or LGA at this stage • <i>Should the new ENC Code make reference to how bullying should be dealt with, treating others with respect or failure to uphold the law as these were previously covered by the Code.</i> • There is no limit on the content of the Code other than it may not conflict with S29-34 of the Act
Declaration of Interests	S28	The Code to include provision the authority considers appropriate in respect of the registration in its register of:	<ul style="list-style-type: none"> • Register of Interests must be completed by Council within 28days of appointment (S30(1))– upon re-election only new interests must be reported in 28 days (S30(2))

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	<p>S30(3)</p> <p>S31(3)</p>	<p>a) Pecuniary Interests</p> <p>b) Interests other than pecuniary interests</p> <p>Disclosable Pecuniary Interests relate to the Cllr (and their spouse or civil partner or person with whom they are living with as if they were spouse or civil partner if they are aware of the interest)</p> <p>If during a meeting a Cllrs becomes aware of a DPI in relation to a matter to be discussed the member must disclose the matter to the meeting and within 28 days to the MO,</p>	<ul style="list-style-type: none"> • Failure to register a Disclosable Pecuniary Interest will be a criminal offence (s34) Conviction can lead to disqualification as a Cllr for up to five years. <i>All complaints therefore will have to be directed to the Police who will determine if any action is to be taken. Consideration should be given to a protocol covering how complaints received direct to the council in relation to this matter should be managed – obviously they have to be passed immediately to the Police but who should do this and should anyone else be informed? ENC Protocol might require MO to make complaint to Police only if Cllr refused to register, rectify or comply?</i> • <i>How will ‘as if they were living with as spouse or civil partner’ to be judged?</i> • No duty to update register other than if matter raised in Committee or at re-election when Cllr should notify the MO within 28 days for addition to the Register (S31(3)). • If the DPI is on the register (or pending notification as above) then under the Act the Cllr does not have to declare it at the committee – <i>so how will the public know of the interest?</i> • <i>Need to have good communication between Democratic Services and MO re declaration of DPIs in meetings</i>
Register of Interest	<p>S28(2)</p> <p>S29(5-6)</p>	<p>The Code to include provision as the council considers appropriate for registration and disclosure of pecuniary and non pecuniary interests.</p> <p>ENC will need to hold, and make</p>	<ul style="list-style-type: none"> • S29(3) allows an entry in a Register to be removed when either the interest is no longer held or membership of the council ceases. <i>The council will thus need to consider how long records must be retained – probably linking to a timeframe in which complaints will be considered.</i> • Parish Councils must supply Register data to ENC.

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		available for inspection Registers of Interest for its Cllrs and those of its Parish Councils – and for making these available on its website	<ul style="list-style-type: none"> • Where Parish Councils have web-sites they must display Registers on their websites – <i>it might be more efficient for them to link to the relevant ENC website page</i> • The Monitoring Officer must enter any interests notified into Register whether or not they are Disclosable Pecuniary Interests (s30(4)) – <i>should the Monitoring Officer make any comment in the Register as to whether Interests meet the DPI definition or not.</i> • S32 makes similar provisions as before for disclosure to the MO but non-publication of sensitive interests
Participation in meetings	S31(4)	<p>If a Cllr has a DPI they may not participate in the discussion or vote</p> <p>Must disclose DPI unless on register (or pending) even if only present for part of meeting.</p>	<ul style="list-style-type: none"> • S31(10) provides that the council may choose to require Cllrs with a DPI to leave the chamber – <i>Does ENC want to do this?</i> • <i>In this case should there be any provision from them to speak as a member of the public as now?</i> • <i>A councillor with a DPI who fails to leave under Constitutional provision would not be committing a criminal offence but would be subject to the need for the meeting to vote to exclude the ‘disruptive’ member.</i> • Duty to disclose any new DPI not on register or pending at informal meetings, briefings, site visits or correspondence
Dispensation	S33	<p>The council may on written request grant a dispensation to a Cllr with a DPI to enable them to either take part in and /or vote on the relevant matter if</p> <p>a) the number of Cllr affected would be so great as to impede the transaction of business (<i>i.e. become inquorate</i>)</p> <p>b) the number of Cllr affected</p>	<ul style="list-style-type: none"> • Members applying for a dispensation may participate and vote on grant of dispensation • Power to grant dispensation can be delegated . <i>What arrangements does ENC want to see e.g. delegation to MO with appeal to a Committee?</i> • Parish Councils to deal with their own dispensations

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		<p>would be so great as to upsets of the political balance of those making the decision</p> <p>c) Is in the interest of residents</p> <p>d) Is otherwise appropriate</p>	
Complaints procedures	S28 (6)	All principal councils (including ENC) to have arrangements to investigate allegations and make decisions on them (including those about parish councillors)	<ul style="list-style-type: none"> • All previous arrangements under the Standards Committee Regulations 2008 removed – as is appeal/resource to Standards for England. Councils free to set own procedures. • The Act allows for councils to set own processes and to delegate more of process. No requirement for review option or hearing. • The Act allows for failure to be determined without an investigation – this seems reasonable if failure has been admitted but must be subject to rules of natural justice to enable accused cllr to be heard or to test the evidence.
Decisions/Sanctions	S28(11)	<p>The council may decide whether or not it wishes to take action against a Cllr for breach of the code and what action to take.</p> <p>Decision can be delegated to a Committee, Sub-Committee or Officer (subject to view of Independent Person below)</p> <p>However there are no statutory sanctions so cannot require suspension, training or apology etc</p>	<ul style="list-style-type: none"> • No power to remove repeat offender (unless with agreement of party leader or council) • <i>How powerful will sanction of breach of Code be?</i> • Some actions which might be taken include publishing findings in Nene Valley News; reporting findings to council for information; removing council facilities from a councillor • Cllrs and officers (and Parish Councils) are not required to respond to findings of ENC (nor co-operate with investigations/provide documents). • Existing powers do allow suspension of Cllrs from Committees for up to 6 months with consent of relevant Group Leader (R V Broadland DC ex p Lashley [2001] EWCA Civ 179)
Independent persons	S28(7)	All principal councils must appoint at least one independent person	<ul style="list-style-type: none"> • The definition of 'Independent person' includes member, co-opted member or officer of the authority. This means that current

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		<p>whose views <i>must</i> be sought and taken into account before making a decision on an allegation</p> <p>The independent person's views <i>may</i> be sought by the authority dealing with an allegation not being investigated by a member the subject of an allegation</p>	<p>Independent Members of Standards Boards are not eligible to serve as the Independent Person for the same council. (although a second, conflicting, interpretation has now been issued and guidance will be required)</p> <ul style="list-style-type: none"> • Role must be advertised in manner decided by council to bring it to attention of council and appointment must be approved by a majority of members • Independent Person may be paid expenses or allowance and still be considered independent • <i>If the Independent Person is consulted by the Cllr but this then prejudices them from participating impartially in the determination of the allegation – does this mean we need more than one?</i>
Standards Board/ Committees		<p>Any Standards Committee (and sub-committees) must be established under S101 of the Local Government Act 1972</p> <ul style="list-style-type: none"> • The Independent Member may not be a voting member of any local Standards Committee 	<ul style="list-style-type: none"> • Standards Committees (and sub-committees) are now just ordinary council committees only provision for the exclusion of public and press is that provided for under Part 5A of the Local Government Act 1972 <ul style="list-style-type: none"> ○ Subject to proportionality rules ○ Co-opted members are non-voting e.g. independent person (unless purely advisory function). <i>Does ENC want an advisory committee so that final decision taken by full Council – greater impact of decision of breach – but could mean greater debate in full council?</i> ○ Will need formal delegated powers from Council