



East  
Northamptonshire  
Council

## Standards Board – 1 February 2012

### Activity Report of the Monitoring Officer

#### Purpose of report

This report provides a brief update on current Monitoring Officer activity and ethical matters as requested by the board for each meeting.

#### Attachments

Appendix A – Member Brief on Pre-determination

#### 1.0 Parish and Town Activity

- 1.1 Since the board met on 7 December 2012, 5 enquiries have been recorded from parish and town clerks and councillors, district councillors and the general public, mainly seeking advice on personal and prejudicial interests.
- 1.2 Changes to the town and parish council registers of interest continue as vacancies arise and are filled. There are currently 39 vacancies around the district
- 1.3 At the time of writing this report there were 30 outstanding Register of Interest forms for Parish Councillors. The appropriate Parish Clerks had been contacted to remind those Councillors to return the forms to the Monitoring Officer.

#### 2 Complaints

- 2.1 It is hoped to hold the closing assessment sub-committee for a complaint referred for 'other action' prior to this Committee and provide a verbal report. An assessment sub-committee will be convened shortly for a further complaint, the assessment for which has been delayed due to its complex nature.

#### 3 Training

- 3.1 A Member Brief on Pre-determination was issued following the implementation of Section 25 of the Localism Act on 15 January. (See Appendix A) It was sent to all District Councillors and Town and Parish Clerks for distribution.
- 3.2 A training session for Town and Parish Councils was held on Thursday 19 January on Planning considerations and Planning Enforcement, attended approximately 30 councillors and clerks. Although not directly related to standards, a significant proportion of complaints originate from planning activity undertaken by councils and it is hoped that this training will assist in reducing this proportion. The session was well received and will be repeated in the summer after the sessions on the revised standards arrangements.

#### 4.0 Localism Act – other matters

- 4.1 Following the recommendation from the last meeting, the Chair and Vice Chair of the Standards Board, together with the Monitoring Officer, met the Leader of the Council, and the Leaders of the Independent and Labour groups to discuss the future of the Standards. All expressed support for the Standard Board Working Party to continue its work on developing future standards arrangements for this council. This approach was then formally endorsed by the Council at its meeting on 9<sup>th</sup> January.

- 4.2 A workshop for Town and Parish Councils will be held on Monday 27 February to discuss possible future arrangements for Standards following the passing of the Localism Act. The workshop will explore what the Act requires to be done, what is being proposed for East Northamptonshire Council in terms of its arrangements and consider how those proposals might be of assistance to Town and Parish Councils in the District. (See further paper on this agenda.)
- 4.3 The government has confirmed that the expected starting date for the new standards arrangement will be 1 July 2012. However Standards for England have announced that they will effectively have ceased activity by 31 January. This leaves six months of the current regimen where the option of passing a complaint to Standards for England is not available. Standards for England also plan to close their web-site on 31/1/12. ENC has downloaded all their advice leaflets as some will continue to have relevance after the change to the new regimen.
- 4.4 Both ACSeS and NCALC have now said that they will produce a Revised Model Code of Conduct for Councillors. However these will not be available until late February/early March after the draft regulations on Disclosable Pecuniary Interests are produced. (These Regulations are expected shortly.) Both Codes are to be based on paragraphs 3-7 of the current code, on the grounds that it is then for councils to make a case for change, an approach which may not suit those councils seeking a minimalist approach. It has also been clarified that there is no apparent sanction for Town and Parish Councils who do not adopt a Code or who fail to act on the recommendations of any 'Hearing Panel' following a complaint. However there is always the chance that the council concerned could be judicially reviewed in respect of the duty to promote high standards of councillor conduct.
- 4.5 The ACSeS counsel's opinion on the eligibility of existing Independent Members to be new Independent persons has now been received. This confirms the view that they are not eligible. However a number of councils have asked DCLG to consider provision under the transitional arrangements for Independent Members to be able to act as Independent Persons for a limited time to enable the transfer of knowledge.

<b>Legal</b>	Power: Local Government Act 2000 ,Local Government and Public Involvement in Heath Act 2007 and Localism Act 2011				
	Other considerations:				
<b>Background Papers:</b>					
<b>Person Originating Report:</b> Sharn Matthews, Monitoring Officer, 01832 742108, smatthews@east-northamptonshire.gov.uk					
<b>Date: 25 January 2012</b>					
<b>CFO</b>		<b>MO</b>		<b>CX</b>	

(Committee Report Normal Rev. 22)



# Member Update

<b>Date:</b>	24/1/12
<b>Ref no:</b>	Item 5 Appendix A

<b>Title:</b>	Pre-determination and the Localism Act
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**Summary:** The predetermination section in the Localism Act is now enacted. However Member must still avoid indicating in advance of a decision by the council that they are not prepared to change their minds under any circumstances.

**Further information:**  
 Section 25 of the Localism Bill states that:  
*“An decision maker is not to be taken to have had, or to have appeared to have had, a closed mind when making the decision just because-*  
 a) *the decision-maker had previously done anything that directly or indirectly indicated what view the decision maker took, or would take or might take, in relation to a matter, and*  
 b) *the matter was relevant to the decision.”*

The intention of this section was to formalise the existing legal position where unless there is positive evidence that there was indeed a closed mind, prior observations or apparent favouring of a particular decision will not suffice. The aim of this section is to avoid situations where Cllrs who had stood on single issue manifestos or signed petitions were advised they could not participate in the debate on the same issue. It was, and is, accepted that a Councillor came to the decision making process with experience and knowledge, not an empty mind.

However the provision in the Localism Act should not be taken as giving the right to Councillors to do or say absolutely anything in advance of, and especially during, a decision being made. The phrase ‘just because’ is there because the common law considerations of bias and pre-determination still apply. These can be summed up as:

*“Whatever their” (councillors) “views, they must approach thier decision making with an open mind in the sense that they must have regard to all the material considerations and must be prepared to change their views if persuaded that they should.”*

Final statements such as ‘Over my dead body’ or wearing an ‘anti-the issue under debate’ T-Shirt to the council debate could still be considered evidence of a closed mind and bring the risk of judicial review.

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<b>Approved by SMT</b>	
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