

EAST NORTHAMPTONSHIRE STANDARDS BOARD

Date: 7 July 2010

Venue: East Northamptonshire House, Cedar Drive, Thrapston

Time: 7.30 pm

Present: Graham Blagden (Chairman)

East Northamptonshire Councillors: Barbara Jenney Brian Northall

Town and Parish Councillors: Don Campbell Arthur Whittaker
Prudence Goss

Independent Members: Hilary Daniels Lance Quantrill

92. MINUTES

The minutes of the meeting held on 7 April 2010 were approved and signed by the Chairman.

93. APOLOGIES FOR ABSENCE

Councillor Sue North, Councillor Glenvil Greenwood-Smith and Mr Graham Matthews sent their apologies.

94. DECLARATIONS OF INTEREST

Councillor Don Campbell declared a personal interest in agenda item 6(a) as he was a member of Oundle Town Council.

Councillor Barbara Jenney declared a personal and prejudicial interest in agenda item 6(b) as she was one of the dual hatted councillors applying for a dispensation. She left the room during the consideration of that item and did not take part in the discussion or voting.

95. ACTIVITY REPORT OF THE MONITORING OFFICER

The Board received a report on the ethical matters dealt with by the Monitoring Officer since the last meeting. It was noted that 11 enquiries had been recorded from Parish

and Town Council Clerks and Councillors, District Councillors and the general public; there were 14 vacant Town or Parish Council seats.

An Assessment Sub Committee had met following a complaint received by the Monitoring Officer. A verbal update was given at the meeting.

The Coalition Government had confirmed its intention to abolish Standards for England. Appropriate provision to do this would be included in the forthcoming Localism Bill, expected to be published by the end of 2010. It was not yet clear what other changes would be made to the standards framework at the same time. This may mean that there would be changes to, or abolition of, the Code of Conduct or to the local assessment process. The Monitoring Officer reported that the Association of Council Solicitors and Secretaries (ACSeS) would lobby the Government to keep a Code but that it should not apply to town and parish councils. The Board asked the Monitoring Officer to put forward its view that

- town and parish councils should be subject to a code of conduct and that it should be the same as for other councils, particularly as conflicting codes could be problematic for dual hatted members;
- some form of independent monitoring was important; and
- public confidence should be at the forefront of any changes.

The Board noted that Graham Blagden had now reached the end of his first four year term of office. At the Council meeting on 19 July Council would be asked to approve his appointment for a second term of four years (assuming the local assessment regime remained).

96. LEARNING FROM ASSESSMENT SUB-COMMITTEES

Over the past year two Assessment Sub-Committees had been held to consider complaints against local Councillors for alleged breach of the Code of Conduct. In both cases the Assessment Sub Committee had decided to ask the Monitoring Officer to take other action. The consideration of these complaints had raised a number of issues which it was felt merit wider consideration by the Board, particularly in the light of the possibility of development of a more localised approach to the determination of Code of Conduct complaints when Standards for England is abolished.

The Board considered whether members not involved in an Assessment Sub-Committee that was being held should be informed that a complaint had been received. Members felt that the limited information that could be made available held no real value and would only lead to speculation. They reaffirmed the current approach that no other members be told and that the occurrence of Sub-Committees be included in the Monitoring Officer's report.

The Council's procedure did not specify how the Assessment Sub-Committee should be selected, only that it should be composed of an Independent member (who will chair the Sub-Committee), a Town or Parish Councillor member and a District Council Member. To date Sub-Committee members had been selected by the Monitoring Officer on the basis of experience (mixing Members with experience of Assessment Sub-Committees and those new to the process) and availability (given that the Assessment Sub-

Committee has to be convened within 20 working days of receiving the complaint). The Board confirmed that this was a suitable procedure to follow.

Both complaints considered in the last year centred on Declarations of Interest issues, which also continued to be the main source of requests for advice by the Monitoring Officer. It was felt that although the Code of Conduct and accompanying guidance produced by Standards for England provided guidance which was clear in most situations, there were still some gaps. Having discussed the issues in depth, the Board agreed with the Monitoring Officer's interpretation of the guidance regarding declaring interests entered onto the Register of Interests but felt that there should be more room for local interpretation and some simplification in any future draft of the code. It was noted that the declaration of interests could become more complex as financial constraints increased and more responsibility was devolved down from Government/higher tier councils.

Members were asked to consider whether they agreed with current procedures around the reporting of Assessment Sub-Committee outcomes. The Board concluded that the principle of discussing anonymised case studies in closed training sessions was still appropriate. The Board also requested that a formal minute be produced from each Sub-Committee meeting and submitted to the Board to ensure transparency of process.

The use of 'Other Action' in both recent cases gave rise to two issues:

- a) In taking 'other action' no 'finding of fact' is made so the Subject Councillor is neither cleared of the complaint nor found guilty. However unlike the complainant they also have no right of review of the decision. This leaves Councillors concerned that allegations have been made against them which they have no right of reply or rebuttal.
- b) Currently under the local procedure, in line with national guidance, if the decision of the Assessment Sub-Committee is for other action there is no right of appeal for the complainant.

There was little room for local variation within the regulations, but the Monitoring Officer asked the Board to consider its views on the issues in case the Government allowed for a more localised approach in the future. The Board debated whether consideration should be given to extending the right of review of decision to the complainant and possibly the Subject Councillor in the case of 'Other Action' decisions, or allow the Subject Councillor to make a short written response to the complaint which could also be considered at the Assessment Sub-Committee at the same time as the complainant's letter. It was agreed that the current regulations did not completely follow the rules of natural justice and the members were inclined to agree that the Subject Councillor should have the right to make a short written representation at the Assessment stage. The Monitoring Officer agreed to seek legal advice to see if such a local variation would be possible within the current legislation.

97. THE RELEVANT AUTHORITIES (STANDARDS COMMITTEES) (DISPENSATIONS) REGULATIONS 2002

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.

(a) Oundle Town Council

The Board considered a formal request for a dispensation from a new Oundle Town Councillor in respect of her role as a trustee of the Queen Victoria Hall Charitable Trust, in accordance with the Relevant Authorities (Standards Committee) (Dispensation) Regulations 2002.

Following the Standards Committee (Further Provisions) (England) Regulations 2009 the grounds on which standards committees could grant dispensations to local authority members had changed. Unlike previously, the fact that dispensations had been granted to other members of the Council could now be ignored for the purposes of the 50% rule. As a consequence the Board was able to consider granting requests such as this which resulted from the appointment of new Councillors where the remainder of the Council had existing dispensations.

RESOLVED:

That the request for a dispensation in respect of Councillor Lynda Purser of Oundle Town Council in matters relating to the Queen Victoria Hall Charitable Trust, be granted for a period of four years or their term of office, whichever is less.

(b) Dual hatted Members of Rushden Town Council – Manor Park

The Board considered a request from the twelve dual hatted Members of Rushden Town Council and East Northamptonshire Council to make a local variation to the national Dispensation Guidance to enable them to participate and vote in any future policy decisions regarding the development of the Manor Park Leisure Centre.

In October 2009 the Council had made an 'in principle' agreement to proceed with development to the planning application stage and the Development Control Committee had approved the planning application in May 2010. The Board noted that the Monitoring Officer had advised dual hatted members that they should not participate in these decisions as she felt they had a personal interest in relation to their membership of Rushden Town Council (which they had to declare on their Register of Interests). This, in her view, then became a prejudicial interest as the decisions taken could affect the financial position of the Town Council by virtue of the agreement to the long lease. As a result those dual hatted Members who were present on both occasions declared a prejudicial interest and left the room for these decisions. None chose to speak for three minutes from the gallery before they left the room, as was their right under paragraph 12(2) of the Code of Conduct. The dual hatted Members were unhappy with this advice as they felt that they were unable to fulfil their duty to serve the residents who elected them. It was also apparent that members of the public have not understood why 'their' councillors did not take part in the debate.

As a decision had now been received from Government Office East Midlands not to call in the approval of the planning application, East Northamptonshire Council needed to

consider whether to proceed with the letting of the building contract. Dual hatted Members had expressed a desire to take part in that debate in order to represent the view of their constituents as the decision would have a significant impact on leisure provision in Rushden for decades to come.

The Board noted that the legislation regarding dispensations only enabled standards committees to grant a dispensation to a member or co-opted member of an authority where more than 50% of the members who would be entitled to vote at a meeting were prohibited from voting by virtue of a prejudicial interest or if the political balance (which is legally defined) would be upset to the extent that the outcome of voting would be prejudiced. Neither of these provisions could be applied in this instance.

The Council's solicitor had commented, "If a dispensation was granted, contrary, in my view, to the powers to do so, such dispensation would have no legal standing. The consequences of this would include the fact that dual hatted members would not then benefit from the protection afforded by the Regulations against potential breaches of the Code of Conduct." The Board felt that the risk of a legal challenge via judicial review would depend on what decisions were taken by the Council on Manor Park, but the potential consequences could be serious if the Board granted dispensations.

The Board understood the difficulty of the situation and regretted that currently legislation meant it was unable to grant dispensations. The Board strongly urged the Members to take the opportunity to speak from the public gallery and represent the views of their constituents.

RESOLVED:

That, regretfully, the requests from the twelve dual hatted Members of Rushden Town Council and East Northamptonshire Council for dispensations to enable them to participate and vote in any future policy decisions regarding the development of the Manor Park Leisure Centre be not granted, but the Members be strongly urged to exercise their right to speak under paragraph 12(2) of the Code of Conduct.

98. ANNUAL GOVERNANCE STATEMENT

The Board received and noted the Annual Governance Statement which had been approved by the Audit & Risk Management Committee as part of the Statement of Accounts on 29 June 2010. As the Standards Board and Audit & Risk Management Committee have joint and complementary responsibilities for the good governance of the Council – the Board for ensuring and promoting good ethical conduct and the Audit & Risk Management Committee for overseeing the effectiveness of the Council's financial, audit, and risk management processes – it was appropriate that the Board considered the draft Statement.

99. LOCAL GOVERNMENT OMBUDSMAN ANNUAL REVIEW 2009/10

The Board reviewed the Local Government Ombudsman's investigations into complaints against the Council for the previous financial year, and compared the position with that

of the previous period. The Board were pleased to note that the trend of fewer complaints and more satisfactory outcomes was continuing. It was commented that the increased ease of appeal against planning decisions, as well as a growing understanding that the Council should admit and rectify any mistakes early on in the Council's complaints process and settle before the complaint reaches the Ombudsman, had contributed to the trend.

Chairman