



Standards Bulletin

Introduction

The Committee on Standards in Public Life's review of local government standards continues and it will hopefully be publishing its recommendations in the near future.

Members will be kept informed of all ethical framework developments.

Should you wish to discuss any standards matter, please do not hesitate to contact the Monitoring Officer or any of his Team.

The Standards Committee

The Members of the Standards Committee:

- **County Councillor John Blackie**
- **County Councillor Andy Paraskos**
- **County Councillor Caroline Patmore**
- **County Councillor Peter Sowray**
- **County Councillor Cliff Trotter**

Also invited to meetings of the Committee are:

- **Mrs Hilary Gilbertson MBE**, Independent Person for Standards
- **Mrs Louise Holroyd**, Independent Person for Standards

Caroline Patmore Chair of the Standards Committee

If in doubt, please seek advice from the following:

Barry Khan

Assistant Chief Executive (Legal & Democratic Services) & Monitoring Officer
Tel: 01609 532173
(barry.khan@northyorks.gov.uk)

Stephen Loach

Principal Democratic Services Officer
Tel: 01609 532216
(stephen.loach@northyorks.gov.uk)

Moira Beighton

Senior Lawyer (Governance)
Tel: 01609 532458
(moira.beighton@northyorks.gov.uk)

In this issue:

- CSPL Review of Local Government Standards
- CSPL report "The Continuing Importance Of Ethical Standards For Public Service Providers"
- CSPL Annual Report 2017-18
- Interests' regime
- Sensitive Interests
- Bias, Predetermination, Predisposition
- Members' Gifts and Hospitality
- Complaint statistics
- Standards cases

CSPL Review of Local Government Standards

The Committee on Standards in Public Life (CSPL) review of local government standards continues. The consultation has now closed and responses are being analysed. The CSPL intends to publish its report by the end of the year.

The CSPL held roundtable discussions with Monitoring Officers, Clerks, Independent Persons and others on local government ethical standards on 18 April and 24 April 2018. Notes of the discussions are published online at:

<https://www.gov.uk/government/publications/local-government-ethical-standards-roundtable-transcript-and-summary-note> and echo many of the issues previously highlighted by the Standards Committee:

- *high level of variation in local authority codes*
- *Participants highlighted an inconsistency with an approach of being able to set a code but not enforce it. Participants strongly felt that a lack of stronger sanctions undermines the system and erodes public confidence*
- *Investigations are currently disproportionately expensive to sanctions available.*
- *Most councillors go into local government to make a difference, conduct themselves well, and would find any sanction very sobering. More sanctions are needed for the small minority of councillors who show poor conduct*

Dr Jane Martin of the CSPL gave a speech indicating the lessons learned so far during the review, which reflect the recurring themes listed above and other issues:

https://localgovernmentlawyer.co.uk/index.php?option=com_content&view=article&id=35337%3Astandards-matter&catid=59&Itemid=27

Members will be kept informed of developments.

CSPL report “The Continuing Importance of Ethical Standards for Public Service Providers”

The CSPL published the above report on 8 May 2018. It can be accessed online at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705884/20180510_PSP2_Final_PDF.pdf

The report looks at the landscape within which the delivery of public services operates, including the impact of the proposed withdrawal from the European Union. Key findings from the report are:

- The public want services to be delivered responsibly and ethically, regardless of provider.... And the public expects that when service delivery fails, there will be a direct line of accountability to the public authority responsible.*
- ... As the United Kingdom establishes new public sector bodies and regulatory approaches, there will need to be a continued, consistent and rigorous application of the Seven Principles of Public Life to public service delivery.*
- ...that the government has made some improvements in how it manages the ethical conduct of contractors as part of a broader maturing of outsourcing practices...but .. otherwise made little progress in adopting the Committee’s recommendations; limited progress on introducing formal measures to reinforce the application of ethical standards; ...*
- The Committee remains of the view that more must be done to encourage strong and robust cultures of ethical behaviour in those delivering public services. To that end, the Committee reaffirms the recommendations made in its 2014 report and has made a further set of more*

detailed, follow-up recommendations to address particular issues of concern.

The Government has written to the CSPL indicating it will consider the recommendations and respond in due course:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/709203/MFC1308_response.pdf

Members will be kept informed of developments.

CSPL Annual Report 2017-18

The CSPL has published its Annual Report for 2017-18:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/725871/20180711_FINAL_Version_9_CSPL_Annual_Report_.pdf

The CSPL states that during 2018/19, it will, in particular:

- keep a particular watching brief on “developments in Westminster with regard to alleged bullying and harassment of staff.”
- monitoring responses to the recommendations in the CSPL ‘Intimidation in Public Life’ report;
- Continuing its review of local government ethical standards.

Members will be kept informed of developments.

Interests’ Regime

Members must register and disclose ‘**disclosable pecuniary interests**’ as set out in regulations and detailed in the Members’ Code of Conduct, and **membership of any trade unions or professional associations** (as ‘interests other than a disclosable pecuniary interests’), but generally no wider, non-pecuniary, interests (eg membership of public and charitable bodies) unless a Member

holds a position/office within the body for profit or gain.

A pecuniary interest is a disclosable pecuniary interest (“DPI”) if it is of a description specified in regulations ie

- **Employment, office, trade, profession or vacation (for profit or gain)**
- **Sponsorship**
- **Contracts**
- **Land**
- **Licenses**
- **Corporate tenancies**
- **Securities**

(please see the Code for the detailed descriptions

-

<http://www.northyorks.gov.uk/article/23630/Councillors-code-of-conduct>)

And either:

(a) it is the Member’s interest or

(b) an interest of—

- the Member’s spouse or civil partner
- a person with whom the Member is living as husband and wife, or
- a person with whom the Member is living as if they were civil partners

And the Member is aware of the interest.

A Member with a DPI may not participate in the discussion of, or vote on, Council business (unless a dispensation is granted) and must withdraw from the meeting room.

If a **dispensation** is granted to a Member with a DPI, the Member must still **declare** the interest and the fact they are relying on the dispensation to the meeting.

The Register of Members’ Interests is maintained by the Monitoring Officer and is available for public inspection in Rm 11, County Hall. Electronic copies of Members’ interests forms (redacted to remove signatures) are also published on the Council’s website (as required by the Localism Act 2011) at:

<http://democracy.northyorks.gov.uk/Committees.aspx?councillors=1>

Members must, within 28 days of becoming aware of a new interest or a change to an existing interest, register the necessary details by providing written notification to the Monitoring Officer.

Please note:

A Member commits a **criminal offence** if, without reasonable excuse, s/he —

- fails to:
 - ❖ register disclosable pecuniary interests
 - ❖ disclose an interest to a meeting where required
 - ❖ notify the Monitoring Officer of an interest disclosed to a meeting
- participates in any discussion or vote where prohibited
- an individual Member decision taker takes any steps in relation to a matter where prohibited

A Member also commits a **criminal offence** if, in relation to the registration/disclosure of interests, s/he provides information that is false or misleading and —

- knows that the information is false or misleading, or
- is reckless as to whether the information is true and not misleading.

A court may also disqualify the person, for a period not exceeding five years, for being or becoming (by election or otherwise) a member or co-opted member of the relevant authority in question or any other relevant authority.

Please therefore keep your interests form under review to ensure it is up to date. Should you wish to amend your interests form, please contact Julie Robinson on ext 2953 to make the necessary arrangements or call in to Room 11 in County Hall, Northallerton.

Interests' issues are ultimately Members' responsibility.

If you are in any doubt as to your position, please contact the Monitoring Officer or any of his team.

Sensitive Interests

You do not need to register or declare the details of an interest which you and the Monitoring Officer have agreed is sensitive. A "sensitive interest" is any interest (whether or not a disclosable pecuniary interest) where **disclosure of the details could lead to you, or a person connected with you, being subject to violence or intimidation.**

The existence of an interest must still be registered/declared but not any detail in relation to it.

Should you feel that any of your interests are sensitive given any prevailing circumstances, please contact the Monitoring Officer immediately to discuss.

Bias, Predetermination, Predisposition

Members involved in making a decision on particular business must always bear in mind the rules relating to **bias and predetermination** and must not participate in, or seek to influence, Council business where their interests may prejudice, or appear to prejudice, their views.

Predetermination occurs *where a fair minded and well informed observer, looking objectively at all the circumstances, considers there is a real risk that a decision maker has refused to consider a relevant argument or would refuse.*

Possible examples of bias or predetermination are:

- connection with someone affected by a decision;
- improper involvement of someone with an interest in the outcome;
- prior involvement in a matter;
- commenting before a decision is made.

However, the Localism Act 2011 makes it clear that a Member is not to be taken to have had, or to have appeared to have had, a closed mind when making a decision just because they had previously done anything that directly or indirectly indicated what view they took, or would or might take, in relation to a matter; this would amount to **predisposition** to a view and

is acceptable. This ensures that Members can freely discuss issues, including expressing a view and/or campaigning on an issue, and then later speak or vote on those issues.

Unless there is positive evidence of a closed mind, prior observations or apparent favouring of a particular decision is unlikely to suffice as predetermination

Members are entitled to have and express their own views, as long as they are prepared to reconsider their position in the light of all the evidence and arguments. They must not give the impression that their mind is closed.

Members' Gifts and Hospitality

Although gifts and hospitality offered and declined or received are no longer required to be registered in the Register of Members' Interests, Members do **still need to register** them with the Monitoring Officer, for filing in the Register of Gifts and Hospitality, by completing the appropriate form and returning it to the Monitoring Officer.

The current ethical framework does not stipulate a financial threshold over which gifts and hospitality should be registered (previously, under the old regime, the threshold was £25). The Standards Committee is currently considering guidance to Members in this respect.

Should you have any queries in relation to the registration of any gifts or hospitality received/offered, then please feel free to contact the Monitoring Officer or any of his team.

Complaint Statistics

For the year 1 April 2018 to date, the Council has received four complaints that a Member may have breached the Members' Code of Conduct.

Of those four complaints, three are awaiting assessment by the Monitoring Officer in consultation with the Independent Person for Standards.

The other complaint was assessed by the Monitoring Officer in consultation with the

Independent Person for Standards and no action was required to be taken. Members will be kept informed of statistical information in relation to standards complaints received by the Authority.

Cases

Ledbury case

Members have previously been informed of this case, whereby a Town Council imposed sanctions on a councillor under its grievance procedure, rather than its standards arrangements, following complaints of bullying and harassment.

The councillor's position was that the council should have dealt with the matter under its standards arrangements under the Localism Act 2011.

The High Court held that complaints about Member conduct must be dealt with under an authority's standards regime: the authority cannot deal with them under a grievance procedure instead or alongside a standards process.

The town council's decision to impose sanctions under its grievance procedure was therefore held to be ultra vires and the subject Member was entitled to declaratory relief.

The Local Government Lawyer publication recently published reports on the following cases:

1. Regarding information rights, the First Tier Tribunal has recently ruled that an authority was not required to disclose advice given by an Independent Person for Standards in a standards complaint case, which had not been upheld.

The Tribunal ruled that details of unsubstantiated standards complaints should not generally be disclosed to the general public under the Freedom of Information Act and would be exempt under section 40(2), as the information was the personal information of the councillor and it would be unfair to disclose it in those circumstances.

Contributors:

Moira Beighton

North Yorkshire Legal & Democratic Services

Resources

Localism Act 2011 and subordinate legislation.

www.gov.uk/government/organisations/the-committee-on-standards-in-public-life

Information published on www.gov.uk

Local Government Lawyer case reports