

## EXMOOR NATIONAL PARK AUTHORITY

16 NOVEMBER 2004

### THIRD ANNUAL ASSEMBLY OF STANDARDS COMMITTEES

#### Joint Report of the Chairman of the Authority's Standards Committee and the Solicitor and Monitoring Officer

<b>Purpose of Report:</b>
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To report on the third annual Assembly of Standards Committees held during September 2004
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#### RECOMMENDATION:

To NOTE the content of the report

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#### 1. ANNUAL ASSEMBLY OF STANDARDS COMMITTEES

- 1.1 Mike Taylor, Chairman of the Authority's Standards Committee, and John Whitcutt, Solicitor and Monitoring Officer, attended the Third Annual Assembly of Standards Committees in Birmingham on the 13-14 September, 2004.
- 1.2 The Assembly was organised by the Standards Board for England and around 1,000 people attended. Its theme was exploring ways in which the Members' Model Code of Conduct could be improved and identifying areas which members of Standards Committees found confusing, difficult or unacceptable.
- 1.3 A summary of conclusions of the Assembly is attached to this report. (The full proceedings can be found on the Standards Board's web site at: [www.standardsboard.co.uk/events/archive/php](http://www.standardsboard.co.uk/events/archive/php)).
- 1.4 The format of the Assembly was, as in previous years, a mixture of plenary sessions, which included a progress report from the Chief Executive of the Boards, and an address by the Minister Nick Rainsford who announced that at last the regulations would shortly be in place to allow delegation of investigations and decisions to local Committees. This will lead many more cases being referred to the Monitoring Officers and Local Standards Committees for investigation and decision.
- 1.5 The most significant point from the Chief Executive's report was that the Board has almost cleared the backlog and is now close to its target of deciding whether allegations should be investigated within 10 days of receipt of the complaint. They are receiving around 300 complaints a month and around 100 are considered to be worth pursuing. This number is likely to rise when local authorities have responsibility for Licensing decisions. An increasing proportion are from members of the public and fewer politically motivated complaints are coming forward as people become more familiar with the purpose of the Code.

- 1.6 Given the way the Assembly was managed it was only possible for us to get a snapshot of the issues that seem to be of most concern to the majority of the people at the Assembly. These seem to be:-
- Difficulties in deciding what is a prejudicial interest? Most problems revolve around Planning Committee work and how individual interest should be seen to be prejudicial. The issue was highlighted by recent cases in the East of England which resulted in a prison sentence for the Chairman of a Planning Committee!
  - How far councillors who were elected on single issue campaigns were then prevented from taking part in the discussions and the decisions on those issues? This seems to be a particular problem for parish councillors who also work at district and county levels. There were no clear conclusions and the Standards Board have agreed to look further into the legal implications of single issue elected members.
  - How far should the Code apply to groups of councillors or try to regulate the behaviour of members in the debating chamber and when on public duty. (Are they ever off duty seemed to be one question with no clear answer?) The general feeling seems to be that the Code can't regulate good manners or professional behaviour but there may be ways in which the Code can be used to identify inappropriate conduct which falls short of being a disciplinary offence.
- 1.7 Overall the Assembly was well run and covered a lot of issues. Most were not relevant to the experience we have had on Exmoor, but it did help confirm that the areas of concern to us are common throughout the country and not linked to the size or nature of the local authority. Thankfully, we do not have the major problems facing some Standards Committees where the Local Authority and Senior Officers and politicians are antagonistic to the work of the Standards Board.
- 1.8 The problem with the Assembly apart from the cost for small organisations (we received a free place because Mike Taylor was on the group advising the organisers) is the sheer size of the event. This makes detailed discussion difficult. Workshops of 50 people are not the best way of teasing out the details of difficult and complex problems.
- 1.9 The Standards Board are planning a series of regional meetings and it may be that it would be better for the Exmoor Standards Committee to attend these rather than the National Assembly unless we come across problems in the future that need to be aired on a national platform.
- 1.10 Finally we heard at the Assembly that the Government is considering amending the legislation to provide for local Standards Committees to be wholly comprised of independent members, i.e. no Authority members must have a place. This amendment is planned for sometime in the future, however.

**Mike Taylor and John Whitcutt**  
**Third Annual Conference of Standards Committees**  
**3 November 2004**

## **REVIEWING THE CODE OF CONDUCT**

### **The review**

The Code of Conduct was introduced in November 2001 and came into force across all authorities in May 2002. The Standards Board For England and the regulated community have therefore accumulated almost three years' experience in working with the Code of Conduct. The Standards Board For England therefore felt that the time was ripe to review the effectiveness of the Code of Conduct and see if there were ways in which it could be improved or clarified.

This approach was endorsed by the Minister Nick Raynsford in his speech to the Annual Assembly when he invited The Standards Board for England to carry out such a review and make recommendations to Government. He stressed, however, that the Government did not want to dilute the basic underlying principles of the Code of Conduct but rather see what we learnt from experience of living with it.

The Standards Board for England's intention is to issue a consultation paper by the end of the year seeking views on the Code of Conduct. This will be a three-month consultation and the paper will be sent to all relevant authorities as well as other key stakeholders. It is important to remember that the Code of Conduct is there both to ensure councillors are working to the same high standards across the country and to give the public reassurance that their representatives are working to the highest standards. We shall therefore also be seeking ways to engage with representatives of the public to understand their views about what standards they would expect from their representatives. We shall also be looking at what lessons we can learn from the equivalent Scottish and Welsh codes as well as similar codes governing other walks of life.

Once the consultation is over, The Standards Board for England will reflect on views received and will feed these results back to the local government community as part of its planned series of regional roadshows next year. We shall then make recommendations to Government as to what, if any, changes we believe are necessary. It is important to remember that any changes are ultimately for Ministers and Parliament to decide rather than The Standards Board for England.

### **What to review**

The Code of Conduct can broadly be divided into two different areas. The first part looks at personal behaviour; the second part deals with declaration and registration of interests. The review will seek to address all aspects of the Code of Conduct.

However, at the Annual Assembly of Standards Committees The Standards Board for England concentrated on looking at the first part of the Code of Conduct and sought views on the underlying principles around personal behaviour. All delegates were invited to debate these key issues in a series of workshops chaired either by a Board member or member of the Board's Management Team.

The discussions concentrated on six areas in particular. The discussions were focussed both on the principle of regulating various aspects of behaviour and also the practicalities of seeking to regulate personal behaviour. The discussions were as follows:

### **Disrespect**

The Code of Conduct requires members to treat others with respect when on council business. As with most of the provisions in the first part of the Code, it is a deliberately broad provision which sets a general standard. The Standards Board for

England sought views on whether there was sufficient clarity as to the standards expected of members. It also looked at whether the Code of Conduct allowed sufficient scope for robust political debate or whether there should be an attempt to draw a better distinction between attacking ideas and attacking individuals or groups.

The Board, in enforcing the Code of Conduct, has tended to draw a distinction between comments made about fellow politicians or political parties and comments made about council officers and members of the public. The Board's view has been that fellow councillors are able to rebut comments publicly and have a public platform which is not easily accessible to officers or the public. The Board has also taken a view that, provided comments do not breach discrimination legislation, they tend to allow people to express views about ideas or groups provided the comments do not spill over into personal abuse. There appeared to be a feeling amongst delegates that abusive language used in the council chamber was generally not acceptable and should be seen as a breach of the Code of Conduct. There was, however, a recognition that often these situations could be better handled locally by, for example, better chairing of meetings. It was also recognised that local authorities and political parties themselves could do more to encourage respect and ensure that meetings were conducted without descending into personal abuse.

The other area in relation to this provision which The Standards Board for England has been asked to address through cases is where the boundaries lie between the ability of people to enjoy freedom of speech and the need to protect minorities from discrimination. The conference felt that, whilst people should be entitled to express views which may be unpalatable, there should be a respect of people's human rights. It was important to focus on trying to make people treat each other with respect as a general principle rather than a narrow focus on seeking to see where the line could be drawn as a general rule.

### **Private conduct**

The Code of Conduct says that a councillor should not do anything to bring his or her authority into disrepute. This is a provision which applies both to the member when on council business but also to behaviour during a councillor's private life. This is again a deliberately broad provision and The standards Board for England was seeking views on how far it was appropriate to investigate private matters and whether the Code of Conduct should be concerned with private business. In enforcing the Code of Conduct, the Board has tended to look at whether the private behaviour has had an effect either on the member's ability to carry out their duties or the public's confidence in the member's ability to carry out their public duties.

Debate on this issue can be characterised as where on a scale people position themselves. At one extreme there is a view that councillors, as democratically elected representatives of the community, lose their entitlement to a truly private life and they have a duty to show themselves in a good light under all circumstances. At the other extreme there is a view that private matters are essentially between a councillor and their electorate and that the Code of Conduct should only be regulating behaviour by councillors when on council business.

The general consensus was that there were some activities in a councillor's life which should be regulated. There was a view that a criminal conviction was generally something which would bring an authority into disrepute although there was a view that a distinction should be drawn between so-called regulatory criminal offences (such as speeding) and criminal offences such as assault. However, others felt that any lawbreaking should not be tolerated in an elected representative.

Questions were also raised as to whether distinctions should be drawn around the position a member held within an authority or the type of body on which they served.

### **The duty to report matters to The Standards Board For England**

The Code of Conduct requires members who have a reasonable belief that a fellow member has breached the Code of Conduct to report the matter to The Standards Board for England. There has been a perception that this provision, in its absolute terms, has led to a number of allegations which have been essentially politically motivated.

There was a general consensus that there was a need to give people statutory protection when they were reporting breaches by their colleagues. However it would be helpful to ensure there was a distinction drawn so that matters were reported which were serious and, if proven, would be likely to lead to some sort of sanction.

There was some feeling that a filter could be introduced under this provision so that where a member had suspicions they should seek the views either of the monitoring officer or the chair of the standards committee who could take a view whether the matter should be referred. The counterarguments to this included the difficulties in avoiding conflicts of interest if the matters were subsequently referred back locally.

There was also a request that any provision should not prevent a member from seeking advice about potential misconduct from, for example, their group leader or a colleague.

### **Misuse of resources**

Under the Code of Conduct, it is a breach to misuse resources, particularly for political purposes. The Standards Board for England was seeking views on whether it was clear what were legitimate and illegitimate use of resources and also whether there was any sensible cut-off point which would allow some minor use of resources.

This was the area where there was greatest feeling that this was ultimately a local rather than a national matter. Some people thought any misuse of resources, given that it was public money and amounted to theft, should be frowned upon whilst others accepted that there may be allowances for using the odd piece of paper. There was a feeling that there may be some difference between physical resources such as using council paper or photocopying facilities and electronic resources. For example, where councillors were given e-mail addresses by the council it was often difficult to make hard and fast rules, particularly around constituency and party business. Similar concerns were expressed around rules over use of phone lines.

There was a general feeling that it would be helpful to have some guidelines around this area although it was predominantly a matter for local protocols.

### **Confidential information**

Under the Code of Conduct, members must not disclose information they receive in confidence. The Standards Board for England asked whether the Code of Conduct should make a distinction between information which it was believed should be disclosed in the public interest.

There was a strong view that it was important to respect confidentiality and any legal definition of public interest would be difficult to draw up. If confidentiality was breached it would inhibit discussion and could also lead to proper consideration of matters being made more difficult. Where matters were disclosed as a matter of

conscience, such factors could be looked upon, on a case-by-case basis, as possible mitigation.

However there was a need for better advice on what should properly be regarded as legally confidential and also a need to consider how any such provision related to duties under the *Freedom of Information Act 2000*.

### **Prejudicial interests: a councillor's right to make representations**

The Code of Conduct is clear. A member with a prejudicial interest in a matter must withdraw from the meeting and must not seek improperly to influence the decision. The recent case of *Richardson v North Yorkshire County Council* made it clear that a councillor with a prejudicial interest cannot put aside their councillor's hat and make representations to the committee in the same way that a member of the public can. The public perception of the influence a councillor can have over her or his fellow councillors is too strong to allow them to divest themselves of that role. The Standards Board for England asked whether this provision was fair or whether it gave councillors disadvantages when it came, for example, to presenting their own planning applications to a committee as a member of the public would be able to. There is also the issue of representing the views of constituents when a member has a prejudicial interest.

The delegates were generally supportive of such a provision and recognised that members had to give up certain rights if public confidence was to be maintained in public decision-making. They did not want to see the provision watered down to allow councillors to present matters to a meeting before withdrawing as they felt that the public would not think this was right.

### **Other issues**

The conference did not look at detailed declaration and registration provisions. However, views were expressed that there needed to be a proper debate about whether membership of another public body should be treated as an interest as it currently is under the Code of Conduct. It was also recognised that there are difficulties between the Code's provisions which seek to encourage participation where a member merely has a personal interest (or indeed no direct personal interest at all), and the common law on bias and predetermination. Consideration should be given as to whether different provisions should apply to planning and licensing matters and other council business.

### **What next?**

It should be borne in mind that most delegates at the conference were standards committee members or monitoring officers and therefore more directly engaged in the details of the Code of Conduct. The views should not therefore be taken as representative of local government as a whole. However, The Standards Board for England appreciated the comments received and the consultation paper will seek to canvass views on the difficult questions raised at the conference.

We look forward to receiving your more detailed views.