



Report to Standards Committee

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Subject: Standards of Conduct in English Local Government: "The Future"

1. Background

The Office of the Deputy Prime Minister has now published the Government's response to the Standards Board for England's recommendations for the review of the Code of Conduct for Members, and to the Graham Committee on Standards of Conduct on Public Life's proposals for a review of the New Ethical Framework.

The ODPM is inviting views on the proposals contained in the response document. A copy is available at www.odpm.gov.uk

2. Review of the New Ethical Framework

The Graham committee on Standards in Public Life made recommendations on reviewing the conduct regime for local authority members. The Government has now confirmed its support for the broad thrust of the Committee's recommendations, namely that there should be a further localisation of the system, to give local authorities greater ownership of the system, but with the Standards Board for England continuing to have a strong role strategic in providing guidance and support, and promoting best practice on the handling by local authorities of allegations of misconduct. The role of independent co-opted members of Standards Committees should be reinforced, and the Code of Conduct should be simplified and made easier to understand and operate at local level.

In more detail, the Government's response is as follows:

(a) Parish Councils would remain subject to the Code of Conduct

The role of Parish Councils, particularly in the planning process, is such that the Government concludes that Parish Councils should remain subject to the Code of Conduct.

(b) **All standards complaints against Councillors would be made to the Monitoring Officer rather than to the Standards Board**

Contrary to the view of the Graham Committee, the Government has concluded that the initial assessment of allegations - to determine whether they relate to the Code of Conduct, whether they merit investigation and, if so, by whom - should be undertaken by local authorities' Standards Committees.

In order to achieve this, it is likely that the initial complaint would now have to be sent to the Monitoring Officer rather than to the Standards Board, as the Standards Board would otherwise merely act as postman. The Monitoring Officer would then report the complaint to the Standards Committee, which would have to undertake the preliminary steps currently undertaken by the Standards Board, namely to decide:

- (i) whether the complaint appeared to disclose a failure to observe the Code of Conduct;
- (ii) whether the complaint merited investigation;
- (iii) whether the complaint was of such a serious nature that the investigation should be carried out by the Standards Board rather than arranged locally by the Monitoring Officer.

The Standards Board would clearly have to issue clear guidance as to how these functions should be conducted.

The Government has also rejected the recommendation of the Graham Committee that a member against whom an allegation has been made should be informed of the complaint before the initial sieving process is undertaken. In their view, if the initial sieving process is to be undertaken promptly, there is no opportunity to accommodate notification to, or representations from, the member.

(c) **Local authorities would refer up to the Standards Board complaints which they felt unable to investigate or which their Standards Committee would not be able to determine for example because they related to allegations of very serious misconduct**

The Standards Board would retain the capacity to investigate complaints which were referred up to it by Standards Committee.

The Government's response makes reference to the possibility of introducing local mediation and settlement of complaints. The conduct of investigations and hearings is expensive, especially for those authorities with numerous Parish and Town Councils. In a significant number of instances, particularly those relating to failure to treat with respect or those which relate to failure to disclose personal interests, but where the failure could not have affected the end decision, the complainant may be happy to receive and acknowledgement of error

and an apology. If the initial complaint comes to the Monitoring Officer, there may be an opportunity to effect such amicable local resolution, but that opportunity needs to be conducted within a clear statutory framework, and so needs to be built into the new legislation.

- (d) **The Standards Board would concentrate on monitoring and improving the effectiveness of the system and investigating only the most serious allegations**

The Government proposes that each Standards Committee should be required to set targets for the time taken to undertake each stage of the process and to publish an annual report on their performance against those targets. The Standards Board would then be able to compare the performance of Standards Committees, to provide targeted advice and support to those Standards Committees and Monitoring Officers who were struggling with the new responsibilities and would be given a reserve power to withdraw the right of the local Standards Committee to determine cases locally. The Standards Board would provide for a minimum level of training for all members of Standards Committee.

The Government is considering how authorities could be encouraged to work together, citing the possibility of Joint Standards Committees on a County-wide basis or between unitary authorities.

- (e) **It would be mandatory that the Chairman of Standards Committees and Sub-Committees should be co-opted independent members**

The Government has rejected the recommendation of the Graham Committee that Standards Committees should have a majority of independent members, recognising the important roles of elected members in securing local ownership of the process and providing practical experience. Similarly, the Government has decided to retain the requirement for Parish and Town Council representatives on Standards Committee of District and Unitary Authorities with Parish or Town Councils within their areas, and on Standards Sub-Committees when dealing with Parish or Town Council matters.

3. **Review of the Code of Conduct**

The Government has resisted requests for the abolition of the Code of Conduct, and has accepted all the recommendations of the Standards Board in respect of the amendment of the Code of Conduct. The main proposed changes to the Code of Conduct for Members can be effected by subordinate legislation and may therefore be introduced relatively sooner than some of the structural changes which require an Act of Parliament. The principal proposed changes are as follows:

(a) **The Code should be made clearer and simpler**

The Government and the Standards Board have yet to demonstrate how this can be achieved.

(b) **No new “offence” of making a false or malicious complaint**

Whilst the Government condemns those who make frivolous or vexatious complaints. It does not support creating a new “offence” of making a vexatious complaint. Standards Committees, through training and otherwise, should discourage the making of vexatious complaints.

(c) **The General Principles should form a preamble to the Code of Conduct**

The Government proposes that the General Principles should remain as at present, and should be included as a preamble to the Code of Conduct. The General Principles are positive aspirations, in contrast to the identification of unacceptable conduct in the Code of Conduct. The two are therefore written from different directions and for different purposes. It is important that, if the General Principles are to be printed with the Code, it should be absolutely clear that a failure to meet the aspirations of the General Principles does not of itself amount to a breach of the Code of Conduct.

(d) **The requirement for members to report other members to the Standards Board should be deleted**

The Government supports the Standards Board’s view that this reporting requirement encourages frivolous and vexatious complaints. Once the initial sieving function is passed to Standards Committees it makes sense for complaints to go in the first instance direct to the Monitoring Officer, but the Government does not propose to establish a new duty to report a matter to the Monitoring Officer.

(e) **A new “offence” of bullying should be added to the Code of Conduct**

Currently, bullying cases are dealt with as failure to treat with respect, conduct likely to bring the member or authority into disrepute, or seeking to compromise the impartiality of the officer. A substantial number of bullying cases have been determined satisfactorily under these provisions. But the Government has a prior commitment arising from the ODPM convened National Taskforce on Bullying and Harassment in Local Government. Accordingly, the Standards Board recommended the inclusion of a new “offence” of bullying, wide enough to cover both patterns of bullying behaviour and single incidents of bullying.

In their report, the Standards Board referred to the ACAS definition of ¹bullying¹, but this is based upon a course of conduct, and upon an intention to denigrate the victim, whereas much bullying arises not out of an intent to denigrate, but simply a failure to respect the victim.

- (f) **The Code of Conduct should contain an exception for disclosure of confidential information where such disclosure was in the public interest**

This follows from the Dimoldenberg case, where the Case Tribunal recognised that there could be a public interest defence to a complaint of disclosure of confidential information, in accordance with Article 10 of the Human Rights Act 1998. Much will depend on how the Code is revised to apply this test.

- (g) **Outside official duties only unlawful conduct should be regarded as likely to bring the member's office or authority into disrepute**

The Government has accepted the Standards Board's recommendation that the "offence" of conduct likely to bring the office or authority into disrepute should continue to apply to conduct outside official duties, but only where the conduct would be regarded as unlawful.

- (h) **The "offence" of misuse of public resources should be limited to serious misuse and the Code of Conduct should define "inappropriate political purposes"**

The present provisions of the Code in respect of the misuse of Council resources for party political purposes are acknowledged to be poorly drafted, but there is less agreement on what constitutes such an inappropriate political purpose.

In the absence of an agreed definition, the Standards Board recommended that authorities should develop local protocols setting out what members were allowed to use Council resources for, and what they were not permitted to use them for. Relatively minor breaches should be dealt with locally, but serious breaches should continue to be dealt with nationally. Whilst endorsing this broad recommendation, the Government has not provided any definition of such acceptable or unacceptable political purpose.

¹ "Bullying may be characterised as a pattern of offensive, intimidating, malicious, insulting or humiliating behaviour; and abuse or misuse of power or authority to undermine an individual or a group of individuals, gradually eroding their confidence and capability, which may cause them to suffer stress."

(i) **The range of interests which require to be registered should be reduced**

Whilst the Government has endorsed this recommendation, the Standards Board has yet to make detailed proposals as to how it can be achieved without weakening the intention of the Code that potential conflicts of interest should be flagged up and made public. However, the Government does endorse the proposal that sensitive employment (eg in the security services) should still have to be notified to the Monitoring Officer but would not have to appear on the public register.

(j) **The Code should redefine “friend” as “close personal associate”**

The use of the word “friend” has undoubtedly given rise to confusion, although the Standards Board has been clear that “friend” was to be contrasted with “colleague” or acquaintance”.

(k) **Interests arising from membership of another public body a charity or local pressure group should not prevent members from discharging their representative role**

The Code currently provides that, where a member has a prejudicial interest by reason of membership of another relevant local authority of which he/she is a member, a public authority in which he holds a position of general control or management, or a body to which he has been appointed or nominated by the authority as the authority’s representative, the member may elect to treat that interest as merely personal, thus enabling the member to speak and vote on the matter.

The Government endorses the recommendation of the Standards Board that such interests should now only be treated as prejudicial where the matter under consideration would have a direct impact on the body concerned (for example a grant of money) or where the member is involved in a regulatory decision, such as planning or licensing, but that even in such instances the member should still be allowed to speak on the matter and answer questions before withdrawing before the debate and any vote. This would also apply where the member’s interest arises from membership of a charity or lobby groups, in order to enable a member who has campaigned on a community issue, or participated in a local residents’ association to continue to represent their constituents, although the rules on predetermination would prevent their participation in the actual debate or vote on the matter.

(l) **Standards Committees should have wider discretion to grant dispensations**

The present rules only allow for dispensations to be granted where 50% or more of the members of the decision-making body are conflicted out by reason of prejudicial interests. It is proposed to give Standards Committees the power to permit individual members with

prejudicial interests to speak, in order to represent their constituents, but not to participate in the debate or to vote.

- (m) **The current £25 threshold for declaration of gifts and hospitality should be retained and the register of gifts and hospitality should be made public**

The Local Government Act 2000 failed to provide for the register of gifts and hospitality to be made public. This is now to be rectified. There is a proposal that a series of small gifts from the same source should require to be registered where the aggregate value exceeds £25.

Recommendation

Members are asked to consider the proposals as they affect members and any response.