

## Standards of Conduct in English Local Government: The Future

### The Government Response

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This Paper, published on 15th December, draws together the Government's current views on the future of the conduct regime for local government in England. It sets out a vision for the future regime and provides a co-ordinated response to a series of recent recommendations, reviews and consultations relevant to conduct issues in local government.

In particular, this Paper incorporates the Government's response to:

- Chapter 3 of the Tenth report of the Committee on Standards in Public Life (Graham Committee) – Getting the Balance Right – Implementing Standards in Public Life – January 2005;
- The Role and Effectiveness of the Standards Board for England – Report of the ODPM Select Committee – April 2005;
- Recommendations following consultation on the Code of Conduct for Members by the Standards Board for England;
- Review of the Regulatory Framework Governing the Political Activities of Local Government Employees which was the subject of an ODPM consultation paper in August 2004; and
- A Model Code of Conduct for Local Government Employees – An ODPM consultation paper – August 2004.

It has taken some considerable time for the Government to produce its response to these papers but the comprehensive approach made possible by this delay is to be welcomed.

The Government's responses to these reviews and recommendations reflect the fact that local authorities in England have a strong track record of high standards of conduct and are based on the continuing need:

- to maintain high standards of conduct for local authority members and employees;
- to define effectively what standards of conduct are expected of members and officers, and for such rules to be fair and clear;

- for an effective means of taking action when breaches of the rules occur, and for such means to be fair, clear, proportionate, rigorous and thorough; and
- to ensure that measures are in place to guarantee public confidence in the appropriateness of the ethical regime.

The Government's Vision is for the different elements of the conduct regime – including the members' Code of Conduct, the Standards Board, local Standards Committees and Monitoring Officers – to work effectively together and be an integrated whole.

### **The changes**

The overall approach to conduct set out in the Paper would involve the following principal changes to current arrangements:

- Initial assessment of all misconduct allegations to be undertaken by Standards Committees, rather than the Standards Board;
- Local Standards Committees to be responsible for investigating and determining most cases;
- The Standards Board to adopt a more strategic, advisory and monitoring role but retaining responsibility for investigating the most serious misconduct allegations; and
- Improvements to the operation and composition of local Standards Committees, with independent chairs and committees to include independent members with a balance of experience.

These changes are designed to secure public confidence in giving Standards Committees powers to make initial assessments of all allegations.

In order to ensure the independence and thoroughness on which public confidence in such a locally-based system depends, there is seen to be a fundamental need to improve the independence of Standards Committees and encourage the building up of the capacity and capability of the committees to undertake their new role. The changes will also mean the evolution of the Standards Board into a strategic, arm's-length body dealing only with the most serious cases nationally, and ensuring capacity is increased at local level through increased support, advice and guidance.

Standards Committees should be at the heart of decision-making within the conduct regime. Standards Committees are in the lead in ensuring high standards of conduct at the local level, and are increasingly taking on a greater role in the determination of cases. The Government wishes to continue this development, and consider that it would be a logical step to extend their role further to take on the initial assessment of all allegations. Monitoring Officers would be responsible for arranging to undertake the investigation of most allegations, and committees would make determinations in most cases. Only the most serious cases would be referred to the Standards Board for investigation.

A more locally-based regime would provide an appropriate way for local knowledge of the authority and its members to be fed into the decision-making process. It would enable the experience and skills of the Monitoring Officer to be used more effectively, including potentially allowing more opportunity for local mediation or other intervention falling short of investigation, which might allow disagreements to be diffused before they turn into full-blown allegations. Such a regime might also give an opportunity for Standards Committees to spot politically inspired or vexatious complaints, which might mean that unworthy cases could be rejected as soon as possible, but handled with an understanding of local pressures and sensitivities.

Monitoring Officers and Committees would need to become central, not only in investigating but also in promoting and championing high standards, and ensuring that standards become embedded as an intrinsic part of the local culture. In taking ownership of this issue in this way, Committees would become the main means of increasing councils' awareness of standards issues. There are clear links here to the increasing importance of governance and standards in the CPA process.

Authorities will need to do more than at present to ensure that Monitoring Officers and Standards Committees are:

- properly supported;
- of the appropriate quality; and
- able to promote high standards of conduct throughout each authority, so that concern for conduct issues is embedded in every aspect of councils' work.

The Government accepts the Graham Committee's strong view that to retain public confidence in the independence and rigour of a more locally-based regime, Standards Committees should be required to have an independent chair. However, it does not accept that committees should be required to have a majority of independent members.

### **Changes to the Code**

It is also proposed to simplify and clarify the Code of Conduct for members, so that it better reflects the way modern councils work and is easier for members and others to understand and use. The Government has welcomed the recommendations the Standards Board has presented, arising from its consultation on the review of the Code of Conduct for members and agreed that amendments to the Code should be made along the lines suggested by the Board, including:

- making the Code clearer and simpler; but
- maintaining a rigorous approach to the identification of serious misconduct;
- amending the regime for declaring interests and speaking at council meetings particularly for members who also serve on other public bodies;
- making changes to the arrangements for determining whether conduct in private life should fall within the ambit of the Code; and
- amending the rules on the reporting of allegations by members to reduce the number of vexatious complaints.

The Government also accepts the Board's recommendation that a clearer balance needs to be set between the need for an authority to protect genuinely confidential information and members' rights to make information available in the public interest, in the light of the provisions of the Freedom of Information Act.

The Board's recommendation that a specific provision should be added to the Code to clarify that bullying behaviour constitutes a breach of the Code is also accepted.

The following key changes are proposed to the Code:

- The general principles, currently contained in a separate Order, should be published alongside the Code which we believe is to serve as a reminder of the guiding principles for member conduct and give a positive tone to the provisions of the Code;

- Certain behaviour outside official duties should continue to be regulated, but this should be restricted only to matters that would be regarded as unlawful;
- In relation to appointments to other public bodies amendments to the Code will adopt a solution involving the member making a declaration of personal interest at the time when s/he speaks on a relevant issue (rather than at the start of the meeting). In addition, even where the member has a prejudicial interest in the matter relating to the body he represents (eg where the matter has a direct impact on the body concerned, or where the member is involved in regulatory matters in a decision-making capacity such as in respect of planning and licensing), s/he should be allowed to remain in the meeting to speak on behalf of the body, or on behalf of a campaign that s/he supports, but should withdraw before the vote;
- A similar approach is to be adopted to members having a personal or prejudicial interest in a planning application;
- The "whistleblowing" obligation to report breaches of the Code will be abolished (which most members will welcome).

In parallel, the conduct regime relating to local authority employees will be made more systematic, in particular, by the introduction of a Code of Conduct for employees, taking into account lessons learnt in the operation of the Code for members. The current rules requiring senior local authority posts to be politically restricted will be retained but with changes to raise the pay limits for political assistants and removal of limitations on the changes. A separate briefing will deal more fully with these topics.

The Government believes this approach will provide the conduct regime that local government will need in future as it develops the kind of strategic role encouraged as part of the "Local Vision" debate. A number of the ideas for change require legislation which will occur at the next convenient opportunity that Parliamentary time allows. No information is provided as to when this might be, but it is not expected until at least the 2006/7 Parliamentary Session..

### **Conclusion**

At last the Government seems to have accepted the thrust of the original Nolan recommendations to ensure that standards issues are largely dealt with locally, bringing in strategic regulation at a national level. Whilst it might be nice to say "we told you so" the proposals should be welcomed as bringing back an appropriate sense of proportion to ethics and standards issues.

The proposed changes will go a long way towards resolving some of the criticisms of the Code itself and the enforcement regime. Doubtless there will be some disappointments. In particular the emphasis on improving the quality of standards committee work may be seen as a slight on the valuable work done in many authorities since the Local Government Act 2000 to raise the profile of ethics and standards issues and to promote high standards. The further consultation proposed and the need for legislation will mean the changes will not all happen as quickly as some would like. The test of commitment will be the extent to which all involved will move forward in the spirit of the new regime in anticipation of the changes being formalised.

Any comments or views on the Consultation Paper should be sent to:

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