

STANDARDS COMMITTEE – 2ND NOVEMBER 2006

A QUESTION OF STANDARDS: PRESCOTT'S TOWN HALL MADNESS AND THE STANDARDS BOARD FOR ENGLAND'S RESPONSE

Report of the: Monitoring Officer

Status: For consideration

Executive Summary: The Cornerstone Group has published a paper on the workings of the Standards Board for England attached as an appendix to this report and the Standards Board have responded to the paper to clarify what they consider to be misinterpretations. Their reply is also included within the appendix to this report.

This report supports the Key Aim of advising Members of current criticism relating to the workings of the Standards Board for England and the Board's response.

Portfolio Holder Cllr. Loney

Head of Service Head of Legal and Committee Services – Christine Nuttall

Recommendation: Members are requested to note the report and the reply given by the Standards Board for England.

Background

- 1 A group of Conservative MP's called the Cornerstone Group recently published a paper on the workings of the Standards Board for England entitled "A Question of Standards: Prescott's Town Hall Madness" attached as an appendix to this report. This paper appears to have caused concern amongst members regarding the workings of the Standards Board for England and the Code of Conduct. The Standards Board for England believes the paper contains a number of misinterpretations regarding the standards framework and the Standards Board for England have responded to the paper to clarify the misinterpretations and their reply is also included within the appendix to this report.

Introduction

- 2 This report summarises some of the main points set out in the Cornerstone Group's paper and the replies given by the Standards Board for England.

Substance of Cornerstone Group's Paper

- 3 The Executive summary of the Cornerstone Group's paper is as follows:

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“In the past few years local government in England and Wales has been through an extraordinary revolution. Instigated by John Prescott and the Office of the Deputy Prime Minister, local councillors have become subject to a draconian new system of regulation through a new “Code of Conduct”. This is enforced at national level by the lavishly paid officials of the Standards Board and at local level by “monitoring officers” employed by each council.

This new regime has drastically curtailed Councillors’ right to free speech and their ability to represent the views of their electors. This undermines principles and practice of local democracy more than any previous act of central government. Its effect has been to:

- a. deprive councillors of the right to speak for the communities which elected them
- b. create a climate of fear in our town halls and council chambers
- c. transform the relationship between councillors and officials
- d. poison relations between councillors and within councils generally
- e. cut off councillors from their electors to a degree unprecedented in the history of local government

In this report we record some of the bizarre and highly damaging effects of this revolution. These were first drawn to our attention by councillors in our own constituencies. As soon as these were made public, we were amazed by the deluge of cases brought to our attention by other MP’s and Councillors throughout the country.

We find that not only is the Code of Conduct having a malevolent effect, but that the Standards Board has since amplified it, invoking a Common Law provision of “predetermination” which is preventing Councillors from expressing their opinions, or even campaigning properly during elections. Such is the effect of this provision that we and many of colleagues in the House have remarked that if the House of Commons were to be “monitored” like local councils, it would soon be empty.

In our view, this report provides ample evidence that the new system for monitoring the standards of elected officials in local government is not working. Councillors and other elected representatives are uncertain what they can do; their public duties and responsibilities are heavily and wrongly circumscribed. They are no longer able properly to represent their constituents.

We recommend both the abolition of the Standards Board and monitoring officers. John Prescott’s system is a technocratic response to a democratic system in decay. Instead, local Councillors must be responsible for raising a far higher proportion of what they spend locally which will galvanise people to vote. John Prescott’s powers to bully and cajole local government from the

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centre have been wholly malign and thankfully, now that he has departed, we have an opportunity to reenergise local democracy.”

The Board’s Response

- 4 The Standards Board for England’s response concentrates on each of the five damaging effects identified in the Cornerstone paper and clarifies some of the misinterpretations in the paper.
- 5 In respect of the first damaging effect, that is to “deprive councillors of the right to speak for the communities that elect them” the Board states that “this argument relies upon a misinterpretation of what it means for a member to have either a personal or a personal and prejudicial interest in a matter, as opposed to holding a predetermined view. The paper cites the following example: that a monitoring officer advised members that if they owned a mobile phone, they would not be able to take part in discussions on the siting of phone masts in the authority’s area. The monitoring officer also advised that members who owned a car would not be able to take part in discussions on a proposed park and ride scheme in the area. The monitoring officer’s advice stated above shows a misunderstanding over the personal and prejudicial interests provisions in the Code of Conduct.” “No personal interest will arise where a matter affects the member, or their friend or relative, to the same extent as other council taxpayers, ratepayers or inhabitants of the areas.” “For a personal interest to be prejudicial, the interest must be perceived as likely to harm or impair the member’s ability to judge the public interest. The mere existence of local knowledge, or connections within the local community, will not normally be sufficient to meet the test. To constitute a prejudicial interest, there must be some factor that will positively harm the member’s ability to judge the public interest objectively.” “The issue of predetermination in terms of local authority members being able to take part in decision-making is a separate issue to a member having a personal or prejudicial interest in a matter. As the paper rightly states, predetermination is a common law principle. However, this is a legal concept that the courts have always applied to local authority decision-making, and it was therefore established well before the Code of Conduct”
- 6 The second damaging effect is said to “create a climate of fear in our town halls and council chambers.” The Board gives statistical evidence to counter this allegation and states: “The Standards Board is working hard to raise ethical standards among local authorities to improve public confidence in local democracy. Our work has laid the foundation for the government to be able to propose even greater access to locally based decision-making in conduct issues, as well as an overall move towards the local ownership of standards within local authorities.”
- 7 The third damaging effect is to “transform the relationship between councillors and officials.” The paper states: “officers have the power to clamp down on legitimate political debate by members. The argument was primarily aimed at monitoring officers. The paper appears to have misunderstood the role of the monitoring officer. Monitoring officers play a key role in promoting and

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maintaining ethical standards in local authorities, particularly in advising and training members on the Code of Conduct. However, it is local authority standards committees, made up of elected and co-opted independent members, who actually hold hearings into complaints that members have breached the Code of Conduct, and pass sanctions on members if they find that a breach has occurred.” The point is also made that Monitoring Officers have been around since the Housing Act 1989.

- 8 The penultimate damaging effect is to “poison relations between councillors and within councils generally.” “The paper makes reference to politically motivated allegations. We try to discourage such complaints..... Part of our assessment of complaints includes considering whether the complaint is malicious, vexatious or otherwise misconceived. Since April 2006, only 18% of the complaints we have received have been referred for investigation.”
- 9 The last damaging effect is stated as to “cut off councillors from their electors to a degree unprecedented in the history of local government”. The Board’s response is that “a member can still represent their constituents’ views to a meeting if the member has a prejudicial interest and cannot attend themselves. The member can make written representations to officers or arrange for another member of the authority to represent those views. However, the Standards Board for England does recognise that the Code of Conduct has restricted members’ ability to act as community advocates. This is why we recommend to government, as part of the recent review of the Code of Conduct, that the rules around personal and prejudicial interest are clarified, to encourage greater participation while ensuring that decisions are made in the public interest.”

Summary

- 10 The two differing points of view are summarised above for information purposes and to facilitate debate on the question of achieving the promotion of high ethical standards in local government.

Key Implications

Financial Implications

- 11 There are no financial implications identified in respect of this report.

Legal Implications

- 12 Councillors and Independent Members should be aware of Cornerstone paper and the Board’s reply as such debate could influence how the promotion of high ethical standards may be achieved.

Sources of Information: A Question of Standards: Prescott's Town Hall Madness

Executive summary

The Standards Board for England's response to the Cornerstone paper

Press release from the Cornerstone Group of Conservative MPs

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RISK ASSESSMENT STATEMENT

The Standards Board for England is responsible for promoting high ethical standards in local government and debate as to how this might best be achieved should be welcomed.

