

19 September 2006

The Standards Board for England responds to the Cornerstone paper “A Question of Standards: Prescott’s Town Hall Madness”

The Standards Board for England believes that the public has a right to expect high standards of behaviour from elected and co-opted members of local authorities. We believe that a lack of trust in elected officials undermines confidence in them, politics and ultimately our democracy. The Standards Board is responsible for promoting high ethical standards in local government, and welcomes debate as to how this might best be achieved.

The paper referred to above, which was recently published by the Cornerstone Group, identified five ‘damaging’ effects of the current ethical standards framework on local government. The Standards Board would like to clarify some misinterpretations in the paper – regarding our work and the Code of Conduct – that may have led its authors to reach these conclusions.

Each of the five effects identified are addressed below:

1. Deprive councillors of the right to speak for the communities that elect them

The paper argues that the Code of Conduct deprives members of the right to speak for the communities that elected them. However, this argument relies upon on 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. To clarify, a personal interest arises when the issue being discussed affects a member’s well-being or financial position, or that of a friend or relative of theirs, more than others in the authority’s area. 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 area. So, for example, a member would not have a personal interest in the setting of the level of council tax or other measures that apply equally across the whole of the authority’s area. If a member has a personal interest they can still remain in the meeting and vote.

In order to determine whether or not a member’s personal interest is prejudicial, a member has to consider how a reasonable and objective observer with knowledge of all the relevant facts would view the situation and, in particular, how the circumstances are likely to impact on the member’s judgment of the public interest. 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. If a member has a prejudicial interest they are required to leave the room while that item is being considered.

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, with cases going back to the 1940's, and is not altered by it.

2. Create a climate of fear in our town halls and council chambers

The paper states that the current system has created a climate of fear in our town halls and council chambers. The Standards Board for England commissioned research from MORI that has shown there is actually a high level of support for the Code of Conduct. This research revealed that 89% of officers and members surveyed from principal authorities agreed that members should sign the Code of Conduct, and that 78% agreed that maintaining high standards of behaviour of members is one of the most important issues facing local government.

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.

3. Transform the relationship between councillors and officials

The paper argues that the current system has transformed the relationship between members and officers to the extent that officers have the power to clamp down on legitimate political debate by members. This 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 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.

Furthermore, our statistics from April 2006 to the present reveal that just 5% of allegations come from council officials, compared with 59% from the public and 34% from fellow councillors.

It should also be noted that it was the previous government, through the Local Government and Housing Act 1989, that made provision for the appointment of monitoring officers and placed a duty on local authorities to designate one of their officers for this role.

4. Poison relations between councillors and within councils generally

The paper makes reference to politically motivated allegations. We try to discourage such complaints and have been vociferous in this regard including releasing press statements and announcements at our annual conference. Part of our assessment of complaints includes considering whether the complaint is malicious, vexatious or otherwise misconceived. The Standards Board also keeps its referrals criteria under regular review in light of experience and feedback. Indeed, since April 2006, only 18% of the complaints we have received have been referred for investigation.

5. Cut off councillors from their electors to a degree unprecedented in the history of local government

A member's status means that they must give up certain rights that other members of the public may exercise. However, in relation to the impact of the Code of Conduct on members being able to represent their constituents, 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 recommended to government, as part of the recent review of the Code of Conduct, that the rules around personal and prejudicial interests are clarified, to encourage greater participation while ensuring that decisions are made in the public interest.

Evidence from the Standards Board's own research suggests that much work needs to be done to improve the trust that the electorate has in local government. For example, in a face-to-face questionnaire survey of 1,027 members of the public, just 26% of respondents had a favourable opinion of local councillors. On balance more people say that local councillors only sometimes or rarely tell the truth (53%), than think they tell the truth always or most of the time (36%).

We believe that the public has a right to expect a high standard of ethical behaviour from their elected representatives in local government. The ethical behaviour of members can have a direct impact on the trust of the people they serve. In a recent speech, the Minister for Local Government said that: "If the trust between members and the people they serve is missing, people will not invest their time and energy in taking part in the democratic process. For that to happen, I take it as read that the starting point is to ensure our elected representatives follow the highest standards of behaviour when serving the public, and to ensure that people understand such standards are the norm not the exception."

