

Fourth Annual Assembly of Standards Committees

5-6 September, 2005

Birmingham

Report and Commentary

Keith Loney, Christine Nuttall and I attended the fourth annual assembly of Standards Committees in Birmingham on 5-6 September organised by The English Standards Board. About 800 attended the conference, including many monitoring officers, members of local standards committees, local councillors, council leaders and local authority chief executives.

The conference title, “In your Hands” was confusing. It might have suggested, quite wrongly, that local standards were led locally or were about to be handed over to local standards committees. The conference title, explained Patricia Hughes, Deputy Chairman of the English Standards Board, meant that conference attendees played a major part in both setting the agenda for the conference and contributing to its content.

David Prince, Chief Executive of the English Standards Board, gave an early keynote speech. During the last year the Board has been getting on top of delays with investigations and hearings into allegations of misconduct under the Code, and taking account of 1,200 contributions on recommendations for changes to the Code.

The first major issue, said David Prince, revolves around The Standards Board’s eagerness to retain centralised filtering on decisions whether to investigate allegations of misconduct. The Standards Board believes that retention of central filtering is important for the removal of vexatious complaints. At present they remove about 75% of complaints before any are referred for investigation. The Standards Board is not convinced that local standards boards would act more rigorously. The Standards Board is supportive of the parliamentary select committee of the ODPM, which saw a unique strength of the system that complaints should first be considered nationally as a means of ensuring fairness and consistency.

The second major issue is the Code review. The Standards Board has framed its recommendations after taking account of around 1,200 representations. David Prince summarised the overriding aim of the submissions to the ODPM is to have a Code which is perceived as fairer, simpler and more positive in its tone, but remains true to the principles of public life. The recommendations, attached, are with the ODPM for decision.

The third major change is the continuing shift in the balance between central and local responsibility for investigations and hearings. Of the 25% of cases of alleged misconduct worthy of investigation David Prince indicated that 34% of cases coming to the Standards Board for England in the first half of this year were referred to standards committees for local investigation and a further 9% to standards committees for local determination. This delegation is well on track, he said, to meet the target of half of all cases being referred for local investigation and determination by 2007. Reasons for non-referral of cases locally include seriousness of the allegations, scope of investigation and local factors. There is

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a presumption now on the part of ethical standards officers that cases will be referred locally unless there is a particular reason why this should not happen. That shift will continue in the next year.

Sessions on investigations and hearings made up the bread and butter of the conference. David Prince said the Board will help monitoring officers and standards committees as they carry out their new function, and will monitor progress and report back to next year's conference. The Board has been preparing a DVD, due for release this month. It provides best practice guidance on carrying out local investigations and preparing for and arranging local hearings. Monitoring officers raised the issue of increased resources needed to carry the increased workload of local investigations and hearings.

Sir Alistair Graham, Chairman of the Committee for Standards in Public Life presented a strong and cogent note of dissent on the opening morning of the conference. He was critical of the centralised and top-down approach of the English Standards Board and the lack of local involvement, with the volume of minor complaints, the impact on members being investigated, and abuse of the complaints system. His committee has recommended decisions on whether to investigate a complaint under the Code should be decided locally, with only serious allegations referred to the Standards Board. He stressed the potential of local filtering to generate local ownership of the ethical agenda.

Sir Alistair emphasised the need for The English Standards Board to convert itself into a strategic body concerning itself with proportionate and strategic regulation, applicable to all tiers of local government. This means understanding its users, sharing good practice, targeting resources to motivate changes in behaviour and risk assessment to concentrate work where it will have the maximum impact. He envisaged local sifting of complaints by 2007 within a national framework regulated by the Standards Board for England with only the most serious cases being referred to the Standards Board.

“Taken together,” Sir Alistair concluded, “these proposals will enable The Standards Board for England to transform itself into a strategic regulator, able to establish, maintain and independently scrutinise the elements of a national framework within which local standards committees and councillors can manage ethical issues primarily at a local level.”

David Prince, responding to Sir Alistair Graham, insisted: “we are already rapidly turning ourselves into a strategic regulator, focusing on the most serious cases, reducing the size of our investigations team and refocusing our resources to support you in your core purpose of improving confidence in local democracy.”

There were several clues in the speech by Phil Woolas, the Minister for Local Government Minister to indicate which way government is likely to decide the outcome of present uncertainties in the future direction of local standards work. Government is reviewing the whole regime for the conduct of local government, which it will do in the light of recommendations on the Code by the English Standards Board, the report of the Parliamentary Select Committee of the ODPM and the Report of the Committee on Standards in Public Life. A new Code of Conduct is promised during the autumn after a decision by the ODPM. In the short term the key themes that need to be looked at are: first, a consistently high conduct by council members i.e., the culture challenge; secondly, dealing with allegations quickly and fairly; thirdly dealing with proven misconduct firmly and effectively; and finally throwing out vexatious allegations motivated by personal or overtly political gain.

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Much more important for the longer term, however, is the conflict between those who see standards work as largely a matter of enforcing a code, and those who see the issue in a wider context. As Phil Woolas emphasised: “It would be wrong in my view to see your main role as one of policing or acting as a local court of some description in dealing with misconduct. The most important part of the job is to create in each local authority a culture of high standards of conduct. That means putting in place the right training and guidance, and making sure the code of conduct is kept up to date and fit for purpose.” He went on: “So the number one task is not to pursue misconduct... but to create an environment in which misconduct does not arise, or, on the few occasions when it does, it is a rare exception to the norm. The expected norm is of course a high standard of conduct throughout local government.” He concluded: “But to embed that culture properly it is not just a matter for standards committees and monitoring officers. You cannot do this on your own - the whole council must take ownership of this agenda. The political leadership must set a good example. All members and managers must not only promote high standards but also challenge inappropriate behaviour.”

In giving the government’s interim verdict on representations received on the key issues about the role of the English Standards Board, Phil Woolas stated: “It may be that an approach along the lines being recommended by Sir Alistair Graham may serve us better [than the recommendations of the select committee of the ODPM]”.

The conference also contained many practical sessions on matters to do with local hearings and investigations and the context within which standards work is undertaken, especially the low regard in which councils and councillors are held. The later sessions of the conference focused on subjects that promote public confidence in the system and in local democracy.

Bruce Claxton, a past member of the Chartered Institute of Arbitrators and Chairman of the Standards Committee of the Isle of Wight Council spoke in one of the conference sessions about cultural underpinning of standards in his own authority. The detail of his presentation could form a useful basis for a future discussion at the Standards Committee of Sevenoaks District Council. Corporate governance in all authorities will include the need to address the ethical framework in planning, licensing and relations between members and officers.

The Audit Commission, which has a duty to assess district councils, but not parish councils, and champions the interests of service users, has included in its comprehensive performance assessment tests for evidence that councils have adopted codes of conduct and monitor compliance. Effective councils can demonstrate leaders and chief executives promote the importance of the ethical framework and are recognised role models, and that the monitoring officer promotes high ethical standards and has a high profile in practice. Members and staff should exhibit high standards of personal conduct, undertake assessment of standards and maintains registers of interests. The local standards committee should have a majority of independent members and should be respected in the council. Members and officers should treat each other with respect. Externally the council should be seen as upholding the highest standards of ethics and probity.

Surveys of opinion show that local councillors are held in low regard. Public perception prefers allegations of misbehaviour to be made to a body other than the local council. The English Standards Board drew the conclusion that this perception supported their preferred stance in favour of central scrutiny of allegations of misconduct. Equally, the author believes, public perception might be improved if local standards committees were made independent of local councils.

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The after-dinner speaker on the Monday evening gave a dry speech on leadership without any trace of humour, lasting about 30 minutes. She would like to learn a second language and learn more about wine and antiques and is into graphology. She would in the Birmingham context make an adequate daytime lecturer from a lean short list. The chairman of the English Standards Board gave a very brief summary of the conference when winding up on Tuesday afternoon. He is perhaps becoming semi-detached from the direction in which the English Standards Board is heading; and having brought the conference to an end wanted to catch the 4.30 p.m. train back to London.

Summary

A new Code of Conduct is promised in the autumn together with increasing delegation of investigations and hearings of cases of alleged misconduct under the Code to local standards committees. Help will be available in this process with the DVD and support from the English Standards Board. It seems likely to the author that ODPM will instigate greater delegation of the standards agenda to local standards committees and that the English Standards Board will be remodelled as a strategic regulator. Local standards committees will need to participate substantially in promoting culture change to raise standards of conduct in local councils, partly to reduce the number of cases of misconduct, but also to raise the reputation of local councils and local democracy in the eyes of the public with the longer term aim of securing greater involvement with local democratic processes.

Peter Hobbs

12 October 2005

The Standards Board for England's consultation on the review of the Code of Conduct

Recommendations to Ministers

At last year's Annual Assembly of Standards Committees, the then Minister, the Rt Hon Nick Raynsford MP, invited the Standards Board for England to carry out a review of the Code of Conduct in the light of its three years' experience working with the Code. The Minister said that, whilst the fundamental principles which underpinned the Code should be maintained, the Board should see whether there were areas where the Code could be made clearer or more effective.

The Board launched its consultation in February 2005 and consultation closed formally on 17 June. Over 1200 responses were received and an independent analysis of those responses was carried out on the Board's behalf by researchers from the University of Teesside.

This report sums up the Board's conclusions on how the Code should be amended based on its own experience and the consultation responses. The Board's overriding aim was to consider how provisions could be simplified, clarified or liberalised while remaining true to the underlying principles of the Code.

General conclusions

- **The Code should be clearer, simpler and more positive.**
- **How it is enforced, nationally and locally, is as important as its content.**
- **The ten general principles set out in the *Relevant Authorities (General Principles) Order 2001* should be included as a standard to be attained.**

The Government should seek ways to simplify the Code wherever possible, clarify the rules around declarations of interests, and ensure the Code is seen in a more positive light as something which promotes effective local governance in a modern setting, rather than merely being a list of prohibitions of certain types of activity. In particular, the Board recommends that the Government should have the ten general principles on the face of the Code to remind members of the positive values they should be promoting. We believe the Code should, where possible, be written as a positive rather than negative statement. And we believe a better balance needs to be struck between the proper need to protect public decision-making from inappropriate influence, recognition of the key role members play as democratically-elected advocates on behalf of their communities, and the public expectation that members should be allowed to speak up when decisions are being taken which will have a wide impact on the community. This means that the rules governing prejudicial interests need to be reconsidered.

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A key theme of the consultation was the need for a consistent application of the rules across the country, and for clear advice so that all members can understand the lines which they should not cross. Simplification of the Code will help to achieve some of this but the Board is committed to working in partnership with national bodies to ensure there is clear and unambiguous guidance to help councillors do their jobs more effectively while maintaining the standards the public has a right to expect.

The key provisions of the Code with which consultees were most dissatisfied were the provisions relating to the declarations of interests and these must be seen as a priority for the Government. The following section outline the Board's clear view on how the provisions could be improved to strike a better balance between protection of decision-making and the vital role of councillors as democratically-elected advocates on behalf of their communities.

Personal and prejudicial interests

- **There should be greater support for the councillor's role as an advocate for their community**
- **There should be a reduction in the number of personal interests which need to be declared**
- **There should be greater local discretion to grant dispensations.**

The Board believes the fundamental principle underpinning the need to declare interests, and in certain cases withdraw from the decision-making process, is a sound one if the public is to continue to have confidence that decisions are taken in the public interest rather than for personal gain and are seen to be done so.

However, there is a concern that the current rules are overly-restrictive (either in reality or in the way they are interpreted locally) and exclude members from discussing certain matters which their communities would expect them to be addressing or even, in certain cases, which they have been elected specifically to address. Given the changing role of most councillors, the Code needs to be seen to be supporting such local advocacy and the democratic right of a community to be represented when key matters which affect that community are under discussion.

In addition, there is a concern that too much time is spent at the start of a meeting declaring a wide range of personal interests which arise solely from the public role of the individual concerned.

The Board believes the following improvements should be made:

- a) The definition of a personal interest should be restricted so that members do not have to declare an interest where it is merely something that affects them no more than a wide community.
- b) Interests which arise solely because a member serves on another public body should be treated differently from interests which arise from a member's private life. Such public

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service interests should only be required to be declared when a member speaks on a related subject, unless the interest is also prejudicial. It would only be prejudicial if it related directly to the public body (for example, a grant application on its behalf) or was a regulatory decision which directly affected that body or its aims. In such cases, the member should be invited to address the meeting and answer questions on behalf of the body but then withdraw before the substantive discussion so that they are not seen to be influencing the debate.

c) Prejudicial interests where the member is advocating on behalf of an outside body, such as a charity or local pressure group, should be treated in the way outlined in b) above.

d) The Government should also give local authorities broader powers to grant exemptions to members with prejudicial interests who nevertheless are speaking on behalf of their constituents.

Register of interests and register of gifts and hospitality

- **The types of interests which need registering should remain unchanged.**

The Board believes that no major changes are needed in this area although it should be made clear that the register of gifts should be publicly available in the same way as the register of interests, and some of the exact wording of the provisions of the register of interests should be re-examined so it is clear to members what interests the Government intends should be registered.

In addition to these important provisions around registration and declaration, the Board has concluded the following points as ways in which the important provisions relating to personal behaviour can be clarified and simplified while remaining true to the Code's underlying principles.

Disrespect

- **There should be a specific provision on bullying.**

The Code should continue to address disrespect. No definition is needed as each case must be considered on its merits. However, the Board's view is that there should be an additional provision in the Code which makes it clear that bullying behaviour, in particular, should not be tolerated. The Board's experience has taught it that, in a small number of cases, there is a culture of bullying of fellow members, of officers and of the public, and a specific provision in the Code would be a strong signal of disapproval of such behaviour. Whilst legitimate challenges of poor performance will always be necessary, some of the behaviour seen by the Board has been unacceptable and the Board would welcome the

Government's recognition that such behaviour has no place in modern local government.

Disclosure of confidential information

- **Members should be able to disclose information in the public interest.**

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- **The Government needs to consider the impact of the *Freedom of Information Act* on confidentiality.**

The Code should be explicit in allowing members to disclose confidential information where it can be demonstrated that such disclosure is in the public interest. The Board does not wish the situation to arise where a member could technically fall foul of the Code by disclosing information which the authority has decided was confidential when such information would have been accessible under freedom of information provisions. The board believes some in local government continue to treat too much information as confidential and, given the Government's commitment to freedom of information, consideration needs to be given both to how the Code can address this situation and whether the local government access to information provisions need to be revisited.

Disrepute

- **Certain behaviour outside of official duties should continue to be regulated but it should be limited to unlawful activities.**

The Board believes that the Code should continue to cover certain aspects of conduct which do not relate directly to official duties. The Board recognises the views expressed by some that only matters relating to council business should be regulated. However, some of the private activity that the Board has considered does have the potential to bring a member's authority or office into disrepute so the Board believes that this provision should continue to have some wider application, bearing in mind also that one of the ten general principles is a duty to uphold the law. However, the Board believes the provision could be clarified to demonstrate that it is only unlawful activity committed outside of official duties which should be regulated and not activities of which certain individuals may merely disapprove.

Misuse of resources

- **Local protocols should be enforced locally where appropriate.**
- **Serious misuse of resources, particularly for political benefit, should be regulated nationally.**

Many authorities have effective local protocols governing the use of council resources. All authorities should be encouraged to adopt effective protocols, enforcement of which should broadly be left to the local level, with the Board only becoming involved where there has been alleged serious misuse of public resources. In addition, consultation clearly showed that the main concern was about misuse of public resources for party-political advantage. The Government should therefore consider how to clarify the Code's provisions to better control such abuse, and how it should relate to the existing publicity code for local authorities.

Duty to report breaches

- **The duty to report breaches should be abolished.**
- **There should be protection against intimidation where people do complain.**

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- **All involved in the process, including members themselves, need to take greater steps nationally and locally to discourage vexatious complaints.**

The provision of the Code which requires members to report breaches to the Board has been unpopular. The Board believes it had two underlying purposes – to prevent members from turning a blind eye to serious misconduct by their colleagues and to protect members who wished to come forward and report fellow members in spite of pressure to do otherwise. The Board does not believe the present provision achieves either of these aims satisfactorily, and instead has led to members using the provision as a pretext for making trivial allegations to cause mischief.

The Board considered whether the provision should be retained but limited only to allegations of serious misconduct. Whilst this was the most popular option in consultation, on reflection the Board thinks any attempt to draft such a provision would lead to subjective views on what was or was not serious. This would lead to arguments about what should and should not have been reported and would be unlikely to address the concern about trivial allegations. On balance, therefore, the Board believes this provision can be deleted.

However, the two underlying concerns the original provision sought to address need to be dealt with. Whilst the Board believes the vast majority of members would not turn a blind eye to serious misconduct, it believes that for those handful of cases where there does appear to be a serious conspiracy, existing powers in the Code can be used to deal with the issue. The Board is also concerned that members who do report serious misconduct should be protected from victimisation in the same way that employees are protected by law. One way of doing this would be to have a provision prohibiting intimidation of a complainant or witness and the Government should consider such an option.

In addition, the Board is committed to work with the Government to find further ways of reducing politically-motivated complaints. The Board is particularly concerned about examples it sees of allegations being reported in the local press, often before they have even been sent to the Board. Such activity damages the reputation of local government as a whole, and all concerned need to find better solutions to prevent such mischief. This may be outside the scope of the Code review, but we wish to explore options with Government, representative bodies and local authorities as to how the ethical framework can be used more sensibly to the benefit of all.

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