



STANDARDS COMMITTEE

19 July 2006

AGENDA
ITEM:

Summary of report:

The report advises the Committee of the government's response to two consultation exercises carried out last year upon the code of conduct for elected members and on the code of conduct for local government employees. The responses were published in a discussion paper issued in December 2005 by the Office for the Deputy Prime Minister, Standards of Conduct in English Local Government: The Future.

Background Papers:

All published.

Recommendations

- (1) That the contents of the report be noted.

Signed:

**Assistant Director
Legal and Constitutional Services
And Monitoring Officer**

Date 14 March 2006

Financial implications

There are no financial implications arising from this report.

Equality opportunity implications

There are no equality implications arising from this report.

Environment Impact

None.

Legal implications

There are no legal implications arising from this report.

Other policy implications

The new ethical framework is a key part of the Local Government Act, 2000, and is integral in the wider modernisation agenda.

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Background

Following the consultation exercises carried out last year upon the code of conduct for elected members and also upon the draft code of conduct for local government officers the government has issued a discussion paper (December 2005) setting out its response to both consultation exercises.

In setting out its position the paper incorporates the Government's responses 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 – An ODPM consultation paper August 2004.

A Model Code of Conduct for Local Government Employees – An ODPM consultation paper (August 2004).

Conduct of Members

Existing arrangements

The conduct of members of local authorities is regulated by the ethical framework for local government, established by the Local Government Act 2000. The key features of this framework are

A statutory code of conduct for local authority members, setting out the minimum conduct which is expected of members;

Under the current system the Standards Board for England (SBE), investigate allegations of alleged breaches of the code of conduct and also promotes high standards of conduct in local government by providing advice and guidance to authorities and members.

Local standards committees in each local authority are responsible for promoting high standards locally and local Monitoring Officers are responsible for investigating less serious cases, which are referred to them for determination by the standards committees.

The Adjudication Panel for England (APE), a separate independent body, determines the more serious cases.

The future

All relevant bodies (including all local authorities) were required to adopt the code of conduct by May 2002. In September 2004 the Standards Board (the board) commenced a review of the code, and to consider lessons learnt over the three years of the operation of the code which resulted in detailed recommendations being made to Office of the Deputy Prime Minister in October 2005.

The Government welcomes the recommendations the Board has presented 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.

Further the government proposes to make relaxations in areas where the need for relaxations have been identified (particularly to support councillors' advocacy role for their constituents and the public bodies on which they serve), and also provide clarity in areas such as unlawful discrimination, where inconsistencies or concerns have been identified.

The government also accepts 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. In addition, they accept 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.

It is the government's view that there would be considerable benefits in the introduction of more local decision-making. In order to ensure independence and thoroughness on which public confidence in such a locally-based system depends the government considers that there is 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.

These changes will allow 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.

The effects of the changes will therefore have impacts on the roles of the standards committees, the local authority officers who support the committees (particularly monitoring officers), and the Standards Board for England.

They consider that the standards committees should be at the heart of decision-making within the conduct regime. These changes will mean that Standards committees will be taking an increasingly greater role in the determination of cases. This will extend to taking on the initial assessment of all allegations.

Monitoring officers would undertake the investigation of most allegations and committees would make determinations of most cases. Only the most serious cases would be referred to the board.

The government believes that this would provide an appropriate way for local knowledge of the authority and its members to be fed into the decision-making process. It would also 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 defused before they turn into full-blown allegations. Such a regime might also provide an opportunity for standards committees to spot politically inspired or vexatious complaints, which might mean that unworthy cases could be rejected sooner but handled with an understanding of local pressures and sensitivities.

Monitoring officers and committees would also 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 order to build capacity to allow these measures to be successfully implemented the Government states that it will work closely with the board to ensure that guidance is provided on the role and responsibilities of monitoring officers and standards committees and they are ready to take on their new roles.

However, in order to deliver the changes proposed the government recognise that 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 Standards Board

A shift in emphasis in the system from central to increased local decision-making will have a consequential effect on the role carried out by the board.

The government believe that the board should continue to have a central role in the conduct regime for local government. The Board's remit under the Local Government Act 2000 is already to provide advice and guidance to authorities and assist in the creation of a culture of high standards of conduct in authorities. Since November 2004, the Board's officers have referred an increasing numbers of less serious allegations for local investigation and determination.

Currently about 50% of cases referred for investigation to the board are being referred for local action. The government propose that this trend towards a more locally-based system should continue and increase, and with increasing numbers of referrals for local action the Board will need to continue to adjust the focus of its work away from the investigation of cases and towards the provision, maintenance and monitoring of a national framework of support for authorities to ensure high standards locally.

The government sees the board developing a role where it

defines what people should expect the standards regime to deliver, including the roles expected of monitoring officers and standards committees, and then

ensures the effectiveness of their performance.

The Board would issue guidance on roles and responsibilities, and would then need to ensure that authorities carried out these roles effectively and provides support to them through the increased availability of guidance and training.

Further the government propose that there be arrangements in place for committees to report to the SBE on how they have been undertaking their role, e.g. the submission of annual reports, in a common format, and for the Board to monitor their performance, by taking a proportionate, risk-based approach to ensure they are acting effectively, with particular focus on perceived poorer performers. It is the author's view that some kind of inspection regime may develop.

Standards committees would refer only the most serious cases for investigation by the Board. However the Board would have powers to refuse to take on referred cases if it believes they are better handled locally and that the authority merely wishes to avoid dealing with the allegations.

Conduct of members

In addition to the report/inspection in cases of unacceptable performance by standards committees, or where it is considered they are not operating in the public interest, they propose powers of intervention so that the Board could withdraw a committee's powers to deal with cases and for those cases instead to be handled by the Board itself.

The support and guidance from the Board will be aimed at preventing misconduct happening in the first place by

ensuring that members are aware of their responsibilities and that

authorities have systems in place to reduce the potential for misconduct to occur.

Further the Board will set a framework of training requirements, producing guidance material to trainers, setting minimum requirements for monitoring officers and standards committees and supporting self-assessment by authorities.

Independent Members and cooperative working

The Board has raised concerns about the variability of capacity and experience of such independent members and the fact that some authorities are already having difficulty in recruiting sufficient numbers. This when combined with those district councils with large work loads due to high number of parishes may mean allowing standards committees to combine, for example, to have county-wide committees to share the burden between authorities. There may also be other circumstances where it would be advantageous for unitary authorities to share standards committees however these are not specified.

It will be important that the skills and knowledge of independent members are appropriate for their increasingly demanding role. We accept there may be a valuable role for the Board in setting guidelines for the recruitment of independent members and in some way overseeing the effectiveness of the recruitment process.

Role of Monitoring Officers

The quality of service from monitoring officers to members and their authorities will be crucial to the operation of the system, and the perception of fairness and effectiveness of the overall conduct regime. The Board has expressed concerns about the capacity of some monitoring officers to carry out their new investigatory role. Some monitoring officers, for example, feel they are under-resourced and isolated from the centre of decision-making in their authorities.

The Board will be asked to provide guidance on the role and responsibilities of monitoring officers, setting out the requirements they will need to attain to do their job. Training and support need to be provided to equip monitoring officers for their role, which need to be locally-driven by standards committees, as part of their ownership of standards issues locally, with the Board assisting in ensuring that high standards are being achieved.

Role of political leaders and senior managers

A revised regime can only be successful if political leaders and senior managers have the right skills and are committed to making the system work. The Board will undertake work with other key stakeholders to support leaders and chief executives of authorities to ensure that concern about standards is embedded as crucial to a well-run authority, including the provision of better and earlier induction of members and staff into their roles. The Board will also liaise with political parties to underline to them the effect which politically-inspired allegations can have in damaging the public perception of local government.

Summary

All chairs of committees to be independent and committees to include independent members who reflect a balance of experience.

Initial assessment of all allegations of misconduct to be undertaken by standards committees, rather than the Board.

Monitoring/reporting requirements for standards committees, to the Board.

Local monitoring officers to investigate most cases.

Standards committees to determine most cases.

The Board only to investigate the most serious cases.

The Board's role to be redefined as supporting, monitoring and overseeing authorities' performance in dealing with allegations.

Intervention powers for the Board when they consider committees are not operating effectively.

New provisions providing powers for standards committees to impose higher penalties to reflect the need to address the more serious cases.

Conduct of Local Government Employees

Review of Political Restrictions

In 2004 the ODPM consulted on a review of the regulatory framework governing the political activities of local government employees set out in the Local Government and Housing Act 1989. These rules provide for certain senior posts to be 'politically restricted' and for an Independent Adjudicator to consider applications for exemption from political restrictions. They also provide arrangements for the employment of political assistants, including provisions relating to their pay.

The general consensus was that many felt that the existing rules were working, were well understood, were not unduly onerous to administer, and provided the basis of the current level of trust between members and staff, and that there was therefore no need to make changes to the rules.

However there was clear scope for reducing the number of staff covered by the rules either by considering the specific duties of each post and not purely the salary threshold however this could prove to be unduly onerous for authorities to administer.

Some suggested that a suitably framed code of conduct for officers was capable of delivering the appropriate degree of neutrality and propriety, negating the need for any further safeguards in the form of specific provisions restricting activities.

The Government is committed to the principle of the political neutrality of local government employees. To ensure this they propose to retain the existing framework which restricts the political activities of certain senior staff. However, they consider that amendments to the existing rules to ensure the restriction only applies to the most senior, or the most sensitive, posts.

Independent Adjudicator

In considering the best way to handle exemptions from political restrictions, whether or not to retain the existing arrangements or whether the role could instead be undertaken by local standards committees or monitoring officers, the Government believes that

local authorities should take ownership as much as possible for the operation of the rules at local level. Therefore they are minded to abolish the post of Independent Adjudicator, and delegate his role in the making of decisions on applications for exemption from political restrictions to standards committees.

Political Assistants'(PAs) pay

Consultation was also carried out whether political groups should contribute to the funding of PAs and on changing the method of uprating their pay. This was originally fixed, it translated to Spinal Column Point (scp) 44.

Additionally consultees were of the view that that rules governing Mayoral political assistants should be in line with those for local authorities. However, those authorities which have Mayors considered the current rules should be retained.

The Government considers that the current system of fixing the PAs pay through statutory instruments would have inherent delays in the process however as a interim measure it would issue such an instrument as soon as possible increasing the pay rate to the current level of Spinal Column Point 44, and then to pursue primary legislation to fix it permanently the a rate to a scale between Points 44 and 49 other that change they are not currently minded to make any further changes to the rules relating to political assistants.

Rules relating to employees acting as elected members

Comments were sought on these rules relating to the right of employees to have time off to carry out public duties as elected members, and prohibiting councillors from being officers of the same authority.

The Government is not minded not to make any changes to the rules relating to employees acting as elected members.

Draft code of conduct for officers.

The draft was broadly in line with the provisions of the code for members, setting out standards of behaviour to be expected of employees. There was no strong endorsement of the merits of introducing a national code particularly for staff who were not in senior posts and many also pointed out that certain groups and professionals were already subject to codes of conduct which were directly applicable to, and already proven to be effective in guiding the conduct of, their duties.

The Government is currently minded to issue a code of conduct which all employees should follow. The intention would be that the code would set out only general principles of conduct, and that authorities should take ownership of the operation of those principles locally.

It is intended that the code should be incorporated into each employee's contract of employment, with decisions on detailed interpretation a matter for each authority. However further consideration of the content of the code for employees will be needed.

Summary

Issue a code of conduct for local government employees.

Retain current rules requiring senior and sensitive posts to be politically restricted, but ensure the restriction only applies to the most senior or most sensitive posts.

Abolish the post of Independent Adjudicator

Provide for local standards committees to make decisions on posts exempt from political restrictions.

Uprate current rate of pay of political assistants by Statutory Instrument to Spine Point 44.

Amend the 1989 Housing and Local Government Act to allow for the pay rate to be permanently linked to a scale between Spine Point 44 and 49, with no further need for Statutory Instruments to be issued each time to increase the rate.

Implementing the changes

The government acknowledges that if they are to implement the changes set in the discussion paper they will need primary legislation which they intend to seek at the next convenient opportunity as Parliamentary time allows.

Some of the proposals can be put into effect through secondary legislation, which should allow these to be implemented potentially in quicker time.

There would be benefits in providing for a phased introduction of the measures, allowing for capacity building for monitoring officers and standards committees for their roles in the revised regime, and allow for change to evolve organically.