



Standards Committee 21st February 2006

Report from the Borough Solicitor

For Information

Wards Affected:
ALL

Review of Code of Conduct and New Ethical Framework

1.0 SUMMARY

- 1.1 The Office of the Deputy Prime Minister has now published the Government's response to the Standards Board for England's recommendations for the review of the Code of Conduct for Members, and to the Graham Committee on Standards of Conduct on Public Life's proposals for a review of the new ethical framework. The response also deals with the report following on from the ODPM Select Committee report from April 2005 and two consultation papers published in August 2004; Review of the Regulatory Framework Governing the Political Activities of Local Government Employees, and a Model Code of Conduct for Local Government Employees.
- 1.2 The Government's responses to the reviews and consultations are based on the continuing need to maintain high standards, define conduct expected of officers and members, for rules to be fair and clear, for an effective means of taking action when breaches occur for such means to be fair, clear, proportionate, rigorous and thorough and ensure public confidence.
- 1.3 The changes put Standards Committees at the heart of decision making in the conduct regime. Standards committees are taking a greater role in the determination of cases. The government is continuing this development and considers it a logical step to extend their role further to take on the initial assessment of all allegations. Monitoring officers would be responsible for arranging the investigation of most allegations and committees would determine most cases. Only the most serious cases would be referred to the Standards Board for investigation.

- 1.4 A more locally based regime will mean local knowledge can be fed into the decision making process. It also means politically inspired or vexatious complaints could be spotted earlier.
- 1.5 This report also sets out the other changes to the ethical framework which are now proposed by the Government.

2.0 RECOMMENDATIONS

- 2.1 That members note the report and, in particular, the potential resource implications arising from the proposed changes to the ethical framework. Members are also asked to note that a further report will be brought before the members once the changes have been introduced.

3.0 DETAIL

3.1 Review of the New Ethical Framework

The Graham Committee on Standards in Public Life made recommendations on reviewing the conduct regime for local authority members. The Government has now confirmed its support for the committee's recommendations that there should be further localisation of the system, to give local authorities greater ownership of the system, but with the Standards Board for England continuing to have a strong strategic role in providing guidance and support, and promoting best practice on the handling by local authorities of allegations of misconduct. The role of independent co-opted members of Standards Committees should be reinforced, and the Code of Conduct should be simplified and made easier to understand and operate at local level.

In more detail, the Government's response is as follows:

- (a) Parish Councils would remain subject to the Code of Conduct
- (b) All standards complaints against Councillors would be made to the Monitoring Officer, rather than to the Standards Board

The initial assessment of allegations (to determine whether they relate to the Code of Conduct, whether they merit investigation and, if so, by whom) should be undertaken by local authorities' Standards Committees.

The initial complaint would now have to be sent to the Monitoring Officer rather than to the Standards Board. The Monitoring Officer would then report the complaint to the Standards Committee which would have to undertake the preliminary steps currently undertaken by the Standards Board to decide:

- (i) whether the complaint appeared to disclose a failure to observe the Code of Conduct;
- (ii) whether the complaint merited investigation;
- (iii) whether the complaint was of such a serious nature that the investigation should be carried out by the Standards Board rather than arranged locally by the Monitoring Officer.

The Standards Board will need to issue clear guidance as to how these functions should be conducted. Such decisions would be taken by the

Standards Committee on the advice of the Monitoring Officer, and have to be conducted in such a manner that there was no prejudice to the Standards Committee's role of conducting a local hearing and finally determining the complaint. The eventual legislation will also have to address whether a complainant would have an appeal to the Standards Board against a local decision not to investigate a complaint. This new role of receiving and undertaking the evaluation of all complaints will require significant additional resource. It might be necessary to arrange more frequent Standards Committee meetings to conduct this initial sieving process in anything like the 10 working days currently undertaken by the Standards Board's Referrals Unit.

The Government rejected the recommendation of the Graham Committee that a member against whom an allegation has been made should be informed of the complaint before the initial sieving process is undertaken. In their view, if the initial sieving process is to be undertaken promptly, there is no opportunity to accommodate notification to, or representations from, the member.

- (c) Local authorities would refer up to the Standards Board complaints which they felt unable to investigate or which their Standards Committee would not be able to determine, for example because they related to allegations of very serious misconduct

The Standards Board would retain the capacity to investigate complaints which were referred up to it by Standards Committees. Such references of complaints would presumably be limited by the legislation to allegations where the alleged misconduct was so serious that it would, if proved, require a sanction in excess of that available to the local Standards Committee, or where the local Standards Committee was of the opinion that it could not fairly investigate or determine the matter. This raises the question as to whether the maximum sanction available to local Standards Committees should be increased from the present 3 months' suspension. It is worth noting that Standards Committees in Wales have since 2002 been able to impose 6 months' suspension. Without such a change, the number of cases which can be dealt with locally will remain limited.

The Government's response makes reference to the possibility of introducing local mediation and settlement of complaints. The conduct of investigations and hearings is expensive. In a significant number of instances, particularly those relating to failure to treat with respect or those which relate to failure to disclose personal interests, but where the failure could not have affected the end decision, the complainant may be happy to receive an acknowledgement of error and an apology. If the initial complaint comes to the Monitoring Officer, there may be an opportunity to effect such amicable local resolution, but that opportunity needs to be conducted within a clear statutory framework, and so needs to be built into the new legislation.

- (d) The Standards Board would concentrate on monitoring and improving the effectiveness of the system and investigating only the most serious allegations.

The Government proposes that each Standards Committee should be required to set targets for the time taken to undertake each stage of the process and to publish an annual report on their performance against those targets. The Standards Board would then be able to compare the performance of Standards Committees, to provide targeted advice and support to those Standards Committees and monitoring Officers who were struggling with the new responsibilities and would be given a reserve power to withdraw the right of the local Standards Committee to determine cases locally. The Standards Board would provide for a minimum level of training for all members of Standards Committees.

The monitoring system must take account of time taken to resolve complaints locally and to ensure that all parties have the opportunity to participate fully in the process, rather than just the speed with which complaints are determined. Given the limited sanctions available to local Standards Committees and the potential for highly contentious allegations, it is essential that the Standards Board retains its own investigation capability.

The Government is considering how authorities could be encouraged to work together, citing the possibility of Joint Standards Committees on a County-wide basis or between unitary authorities.

- (e) It would be mandatory that the Chairman of Standards Committees and Sub-Committees should be co-opted independent members

An independent chairman has a particular role in ensuring that hearings are conducted in a fair and non-partisan manner. The Government rejected the recommendation that Standards Committees should have a majority of independent members, recognising the important roles of elected members in securing local ownership of the process and providing practical experience.

- (f) The parallel Code of Conduct for Officers should be introduced

The Local Government Act 2000 made provision for the government to prescribe a Code of Conduct for Officers which would be automatically incorporated into officers' contracts of employment and enforced through the authority's disciplinary procedures. The Government confirms that will proceed with such a Code, but that it will consult further on a detailed draft Code following on from any amendments to the Code of Conduct for Members.

- (g) Politically restricted posts will be retained

Under the Local Government and Housing Act 1989, senior officers in local authorities are prohibited from participating in certain party-political activities. These restrictions apply automatically to Chief and Deputy Chief Officers, and officers above a certain salary level, but individual officers have been able to apply to an Independent Adjudicator for exemption from these restrictions. The Government proposes to retain such restrictions on party political activity, but to transfer the responsibility for considering applications for exemption from the Independent Adjudicator to local Standards Committees. We propose to write to the ODPM on this point saying that we

disagree and that standards committees should not be asked to take decisions relating to officer's employment. At the same time, authorities are permitted to appoint up to three political assistants, whose function is specifically to support individual party groups on the authority. The Government now proposes to standardise the salaries of such political assistants at a scale of SCP 44 to 49.

3.2 Review of the Code of Conduct

The Government has resisted requests for the abolition of the Code of Conduct, and has accepted all the recommendations of the Standards Board in respect of the amendment of the Code of Conduct. The main proposed changes to the Code of Conduct for Members can be effected by subordinate legislation and may be introduced sooner than some of the structural changes which require an Act of Parliament. The principal proposed changes are as follows:

- (h) The Code should be made clearer and simpler
- (i) No new "offence" of making a false or malicious complaint
- (j) The General Principles should form a preamble to the Code of Conduct
- (k) The requirement for members to report other members to the Standards Board should be deleted. The Government supports the Standards Board's view that this reporting requirement encourages frivolous and vexatious complaints. Once the initial sieving function is passed to Standards Committees it makes sense for complaints to go in the first instance direct to the Monitoring Officer, but the government does not propose to establish a new duty to report a matter to the Monitoring Officer.
- (l) A new "offence" of bullying should be added to the Code of Conduct

Currently, bullying cases are dealt with as failure to treat with respect, conduct likely to bring the member or authority into disrepute, or seeking to compromise the impartiality of the officer. The Standards Board recommended the inclusion of a new "offence" of bullying, wide enough to cover both patterns of bullying behaviour and single incidents of bullying.

- (m) The Code of Conduct should contain an exception for disclosure of confidential information where such disclosure was in the public interest

This follows from the Dimoldenberg case, where the Case Tribunal recognised that there could be a public interest defence to a complaint of disclosure of confidential information, in accordance with Article 10 of the Human Rights Act 1998. The Government has just announced amendments to the Local Government Act 1972 to bring the definitions of "exempt" and "confidential" information into line with the exemptions in the Human Rights Act and the Data Protection Act.

- (n) Outside official duties, only unlawful conduct should be regarded as likely to bring the member's office or authority into disrepute

The Government has accepted the Standards Board's recommendation that the "offence" of conduct likely to bring the office or authority into disrepute should continue to apply to conduct outside official duties, but only where the conduct would be regarded as unlawful.

- (o) The "offence" of misuse of public resources should be limited to serious misuse, and the Code of Conduct should define "inappropriate political purposes."

The Standards Board recommended that authorities should develop local protocols setting out what members were allowed to use Council resources for, and what they were not permitted to use them for. Relatively minor breaches should be dealt with locally, but serious breaches should continue to be dealt with nationally.

- (p) The range of interests which require to be registered should be reduced

The Government endorse the proposal that sensitive employment (e.g. in the security services) should still have to be notified to the Monitoring Officer but would not have to appear on the public register.

- (q) The Code should redefine "friend" as "close personal associate"

- (r) Interests arising from membership of another public body, a charity or local pressure group, should not prevent members from discharging their representative role.

The Code currently provides that, where a member has a prejudicial interest by reason of membership of another relevant local authority of which he/she is a member, a public authority in which he holds a position of general control or management, or a body to which he has been appointed or nominated by the authority as the authority's representative, the member may elect to treat that interest as merely personal, thus enabling the member to speak and vote on the matter.

The Government has endorsed the recommendation of the Standards Board that such interests should now only be treated as prejudicial where the matter under consideration would have a direct impact on the body concerned (for example a grant of money) or where the member is involved in a regulatory decision, such as planning or licensing, but that even in such instances the member should still be allowed to speak to the matter and answer questions before withdrawing before the debate and any vote. This would also apply where the member's interest arises from membership of a charity or lobby groups, in order to enable a member who has campaigned on a community issue, or participated in a local residents' association to continue to represent their constituents, although in practice the rules on predetermination would prevent their participation in the actual debate or vote on the matter.

A further issue arises where a member is conflicted out because of a local issue which gives them a prejudicial interest, such as a controversial local development proposal. The Court of Appeal in R v North Yorkshire CC ex p Richardson confirmed the plain wording of the Code of Conduct, namely that

a member who had a prejudicial interest must withdraw from the meeting. The result of this was that such a member was precluded from representing his/her constituents at the meeting. The current Code of Conduct ameliorates this by providing that, where a matter affects all the Council Tax payers, ratepayers or inhabitants of the authority's area equally, it does not constitute even a personal interest for the member. The Government endorses the recommendation of the Standards Board that, whilst such local matters would still give rise to a requirement to disclose a personal interest, it would not be a prejudicial interest where it affected the majority of the Council Tax payers, ratepayers or inhabitants of the ward or electoral area which the member represents.

- (s) Standards Committees should have wider discretion to grant dispensations.

The present rules only allow for dispensations to be granted where 50% or more of the members of the decision-making body are conflicted out by reason of prejudicial interests or where political balance couldn't be achieved. It is proposed to give Standards Committees the power to permit individual members with prejudicial interests to speak, in order to represent their constituents, but not to participate in the debate or to vote. We propose to write to the ODPM arguing that the wording of the legislation on dispensations seems to be incorrect.

- (t) The current £25 threshold for declaration of gifts and hospitality should be retained and the register of gifts and hospitality should be made public
- (u) Miscellaneous amendments

There are a series of detailed drafting points which the Standards Board has identified:

- (i) The definition of "relative" needs to be updated to recognise civil partnerships;
- (ii) The definition of "meeting" should make it clear whether it applies to site visits and public meetings organised by the authority;

4.0 FINANCIAL IMPLICATIONS

- 4.1 There are no financial implications arising from this report.

5.0 LEGAL IMPLICATIONS

- 5.1 The changes to the New Ethical Framework will require an Act of Parliament but the Government intends to include the proposed changes in the next Local Government Bill.

6.0 DIVERSITY IMPLICATIONS

- 6.1 There are no diversity implications.

7.0 STAFFING/ACCOMMODATION IMPLICATIONS

- 7.1 There are no staffing accommodation implications

8.0 BACKGROUND PAPERS

- 8.1 Office of the Deputy Prime Minister; Standards of Conduct in English Local Government; The Future, 15 December 2005 (a response to the Standards Board for England Consultation on the Code of Conduct)

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 OPDM Select Committee, April 2005

Review of the Regulatory Framework Governing the Political Activities of Local Government Employees, August 2004 consultation paper

A Model Code of Conduct for Local Government Employees. August 2004 consultation paper

9.0 CONTACT OFFICERS

- 9.1 Any persons wishing to inspect the papers in connection with the above proposals should contact Jane Alver at the Town Hall Annexe, Forty Lane, Wembley, Middx HA9 9HD
Tel: 020 8937 1368

TERRY OSBORNE
Borough Solicitor