

Report on 8th Annual Assembly of Standards Committees
at ICC, Birmingham, 12-13 October 2009

I attended both days, but our group did not arrive in time for **Focus on the Essentials** which was described as optional.

Rosie Winterton, M.P., Minister of State for Local Government, could not be present since the Parliamentary Local Government Committee was sitting. In a video recording she said that there had been three debates in Parliament on the conduct regime. Standards for England (SfE) had been asked to make submissions for "Conduct in Public Life". The aim was for ethical well-being and good inter-relationships.

In his introduction to the Assembly, **Dr. Robert Chilton**, Chairman, noted that Standards had become a political issue. There was public anger how politics were run. A Conservative Green Paper *Control Shift* talked of returning power to local communities. SfE would be abolished. Various matters had been raised. Trivial and vexatious complaints were in fact weeded out. It was suggested that relations with officers had been damaged, but 94% supported the regime and bullying had been reduced. It was claimed that it was difficult for members to speak on some matters, but this was untrue, and the concept of predetermination had existed since 1841. There was said to be an unduly long period of uncertainty for subject members, but assessment decisions were on average made in twenty days. There was said to be crisis in parishes, but in fact 90% of PCs supported the regime. The Conservatives did not currently mention abolition of SfE and spoke only of predetermination. There was a debate on the need for quangos. The cost of the central SfE was £7.6m. The report of the Committee on Standards in Public Life was awaited. 90% of elected members, 92% of town and parish councillors and 94% of clerks supported the standards regime. 81% thought high standards to be important, 47% thought they had improved, 42% thought the Standards Committee (SC) had a high profile in their authorities. The number of investigations completed within four months had improved from 5% to 47%. A national Standards event was planned for next year.

Glenys Stacey, Chief Executive, was unfortunately not so easy to understand with clarity. *Local standards; national perspectives* had been published as an annual review for 2008-09. There were 438 SCs with 4507 members, including 1658 independent members. There had been 2863 complaints, representing one for each 25 members. Twenty-five members had been suspended or disqualified, representing one for each 3000 members. 54% of complaints came from the public, 36% from members, 4% from council officers and 3% from parish or town clerks. It had been decided to take no action in 53%. Local investigations had resulted in decisions of no breach of the Code in 158 cases, and penalty in 56 cases and no further action in ten cases. There had been no complaint about 80% of parishes. A revised code would be published in November or December, to be effective by the time of the general election. Questions had been raised about the cost of investigations, whether sanctions were effective, dealing with vexatious or tit-for-tat complaints and the time taken to deal with complaints.

In questions from the floor a Wigan member wondered why more cases were not sent further and sought advice on dealing with tit-for-tat complaints. A Coventry member pointed out 47% of stakeholders thought that there had been an improvement in behaviour. It was confirmed that adoption of the new Code would have to be advertised after May.

A morning break-out session was on **Local assessment: sharing lessons learnt**, aimed at SC members. This discussion forum was led by Peter Blackwell of Tunbridge Wells, Malcolm Mason of Newark & Sherwood and Peter Rowland of Snowdonia National Park. Subjects for discussion were invited and then those present were asked to join the group discussing the

subject of their choice. There appeared to be no attempt to guide any group discussions. I found myself in a group discussing how to deal with complaints that were inadequately expressed. It was suggested that complainants should be urged to speak to the Monitoring Officer before submitting a complaint, but would the MO be impartial? Most participants thought that the complainant must present evidence. Otherwise the Assessment Committee should collect some. It was suggested that the Subject Member should be able to respond. Groups then reported back with their conclusions. My group report was more conventional than some of the wild suggestions that had been made. It asked whether the Assessment Committee should decide solely on the complaint submitted, whether the MO should tell the complainant if more information was needed and whether advice should be available to the complainant. Another group discussing farming-out investigations outside the Council concluded that it was better to go to another council, and SfE would have a list of solicitors. The SC Chairman could ask why the MO could not do it. A local solicitor should be required to declare any interest. It was asked why, since the MO did not have to be a solicitor, investigation needed to go out to a solicitor. Another group considered the problem of inefficient or delinquent members of the SC. The number of elected members could be limited. Training should be mandatory. MOs should intervene. Another group considered how to keep a SC happy if there were few complaints. An independent member might leave. Good practice elsewhere should be studied. Terms of reference needed to be clear. A group discussing tit-for-tat complaints considered deterrent payments, but these would be impractical and unfair. A rejection letter was recommended. There was a possibility of being sued. SfE should be able to decide who was vexatious. SCs should be able to pass them up to SfE. A group discussed what to do when other action failed. It was possible to adjourn to see whether other action failed. This was allowable. The MO could gather information by agreement of both parties. The complainant could not take the matter further if other action failed. Nothing could be done at present if other action failed. No defence would have been heard, so the matter could not be prejudged. Could other action be after investigation? Should both sides be heard before Assessment Committee meets? If other action failed then a fresh complaint should be raised against the member. The last group considered how to deal with a dysfunctional PC. SC members can visit such PCs and advise. There could be training for new clerks and training on mediation for parish councillors, though it often failed. Withholding the precept or dissolving the PC would be unlawful. Subject members should be early involved. Complaints from parish councillors could be published. The Audit Commission had power to put a PC in special measures. Training chairmen of PCs would also be useful. *[Although some interesting ideas were voiced, this session almost entirely lacked organisation by its leaders.]*

The start of the following plenary session on **The Big Debate** was delayed a quarter of an hour since lunch overran. **David Prince**, the former Chief Executive, recalled that at a public meeting people had recognised serious breaches of the Code and hated people getting away with breaches. People expected accountability of public figures. They wanted investigation and punishment. The question was whether we could afford the standards system. The Local Government Association expected consistently applied standards. MOs had been able to build a positive culture in their authorities. The importance should be recognised of integrity in public servants and public life. **Michael Chater**, Chairman of NALC, said that the Code of Conduct was necessary in public life. He advocated joint SCs. **Alan Gloak**, member of Somerset SC, said that the SC was a useful counterbalance to a single-party authority. Councillors entered local government with adolescent behaviour, but could not now get away with it. The SC stands in the way of totalitarian government. **Kirsty Cole**, MO of Newark & Sherwood DC, recalled that in the late 90s there had been several high-profile cases in local government and this gave rise to the Nolan Committee, the Local Government Act, 2000, Part

3, and the Local Government and Public involvement in Health Act. There were only a few cases of bad behaviour, but perception was important. Trust has now been restored. The standards framework was expensive. Is it a burden in these hard times? The MO lacks the discretion to weed out trivial complaints. An apology would often have been appropriate. Bias and predetermination did not fully align with the Code, as shown recently in the Gardner case. Could we still afford it? It was necessary for good government, but might not be proportionate.

In comments from the floor, it was reported that *The Daily Telegraph* in an exposure had trashed public service and would abolish PCs since they were too much trouble; standards should be retained and we should cope with changes of government; standards are a force for good; PCs could be good, but were a loose cannon; there were complaints that the subject member was not allowed to be engaged at an early stage; most people simply wanted an apology and there should be means of achieving that; the status of the MO had been diminished in local authorities; guidance was desirable on when no further action could be decided; the regime needed to be simplified and proportionate; It must not be watered down; there was need to look at proportionality; new views were needed on how we appraised standards; there was need for a simple system to obtain an apology; PCs tried to do things beyond their knowledge.

Town and parish councils; capacity building, peer mentoring and compacts was the subject of my last session on Monday. **Meera Tharmarajah**, Head of Legal Services, NALC, recalled that there were 9000 PCs and the 2007 Act introduced the possibility of PCs in London. PCs were created in 1894. They were a problem to MOs who had a statutory duty about them. 35% of the population were represented in PCs. The capacity building project aimed to improve the application of the Code and good practice. Initiatives included peer mentoring and compacts between Associations of Local Councils and SCs. Involved in this were SfE, local government committees, NALC and the Improvement & Development Agency.

The group mentoring model would be tested on PCs. Mentors had offered mentoring to eight councils including both members and clerks, with six sessions over six months for each council.

It had been successful. A compact was a written agreement that SCs would work with local bodies, the Association of Local Councils and the Society of Local Council Clerks. Resulting from pilots, there had been potentially fewer complaints, improved understanding by SC members, joint training and early/coordinated interventions. Should SCs engage more with PCs? There could be increased support from the MO. Better understanding of support was needed. **Danny Moody**, Principal Officer of Northamptonshire Association of Local Authorities, said that there was a County Monitoring Officer group. It aimed for consistency between district councils and town councils. He had worked with many councils in late 2008 and early 2009 and attended meetings, sometime with the relevant MO or representative of SLCC. There was a big range of knowledge in SCs about parish and town councils. There was a great difference between councils in the number of PCs in their areas. One needed a pragmatic approach to minor breaches of law. There was not the capacity to address all breaches, even if one wanted to. There was need for training. The project ended with a draft compact. It was a large task. They had invested in training and hired a training officer. **Simon Aley**, Head of Legal and Democratic Services at Corby Borough Council, said that he was a MO and a parish councillor in Rutland.

Fringe meetings were available in the early evening. I attended one organised by the Association of Council Secretaries and Solicitors on "how far can ethical standards improve? Is there utopia for monitoring officers?". It was said that a code was needed and we could not do without it - look at Westminster! There had been some past scandals - Westminster, Doncaster.

Nolan had said standards were high. The mechanics of imposing standards were going wrong. There was a desire to extend the influence of SCs ever wider, and a danger that the SC could become separate from the Council. West Sussex had considered combining the SC with governance or scrutiny. The real measure was what the Chief Executive did. It had been suggested by Merza that SfE should regulate partnerships - a step too far. In partnerships some members were subject to the standards regime, others not. It should be a matter of influencing ones partners.

Is there improvement in ethical standards? What is the role of independent members? Is it non-political, impartial, because we do not trust elected members? Any electoral mandate was diminished by small turnouts. The 2000 Act was aimed at democratic renewal, transparency and honesty. Members understood where the line was drawn and consequently behaved themselves. Perhaps the regime could be less formal, less detailed. Some SC members were taking on watchdog functions, but should not extend their functions.

A Huntingdonshire member had experienced District Councillors judging a case from a party viewpoint. Why had MOs not been allowed to deal with complaints initially rather than taking all complaints to assessment committee? It was hard to defend the cost of the standards regime in the present climate.

[Available time before evening meal did not allow me to remain to the end of this meeting.]

Tuesday morning began with a discussion forum on **Sharing Good Practice**. **Malcolm Mason**, Chairman of SC, Newark & Sherwood District, said that strong ethical leadership was given by members and political leaders. All members had training. PCs were encouraged to be trained. Trust and confidence were built and advice given to PCs and clerks. A PC conference was held at least twice a year. An active SC of 15 members included four independent, four parish councillors and seven councillors. These were enough to staff all sub-committees. There was induction training for SC members. There were robust assessment criteria. Visibility and influence went together. Malcolm Mason attended council meetings and all training sessions and he encouraged all SC members to do so also. He had regular meetings with the MO and Deputy MO as well as the Leader. A new sub-committee had been set up to explore ways. There were 54 town and parish councils in the District. The democratic service officers were encourage to be the first point of contact with PCs. PC members worked on good relationships with clerks. The Parish Council Toolkit had been sent to all PCs. All opportunities to learn were seized. Training was promoted and the MO spoke regularly at meetings.

Mark Scrimshaw, Chairman of SC, Newcastle City Council, had been chairman since 1999. They had kept ahead of the requirements of the law. There had been initial concern about the new regime, but political leaders had been persuaded to sign up to it. It was most important not to be at odds with elected members, but to have regular contact with them. There had been advertisements and head hunting for independent members, who were big hitters. Ethical behaviour had existed before, but it was difficult to get good news about local authorities into the press. We needed to survey the present state of relationships, the historic background etc. There had been a national battle to have local assessment. We must ensure now that it is good and think of its cost. This was not the business of SfE.

Andy Simpson, Chairman of SC, Telford & Wrekin Council, said he had been a member of SC since 1999 and Chairman for three years. The Committee consisted of four independent members, four parish councillors and eight councillors. They dealt with 12-14 cases a year. Few were referred to SfE. The four parish councillors had been elected to the SC. The number of complaints had now doubled. There was healthy engagement with PCs. The perception of the SC was about the greater good. Elected members expected us to have

knowledge of good practice, but they might feel threatened. There were regular meetings with Members, including training. Confidence was growing. It was important to seem independent, and not to have greater relations with any one party.

David Watson, Chairman of SC, Devon & Somerset Fire Authority, had been an independent member of the SC for eight years. It was useful to take an interest in what the local authority did. It was all about relationships. Many people did not know that the SC existed. He was encouraged to attend all meetings of his authority. His role was to be a guide dog, not a watch dog. Training was important. Guidance was now attached to all agenda. We must maintain public credibility. We must be prepared to respond to new challenges.

Points made in questions included the danger of too close conduct with members of Council; Councillors (in East Riding) lived in fear of the SC and needed to take great care in all they did - reform was necessary; the quality of information given to Assessment Committee varied greatly.

The plenary session **On the brink: Coming back from ethical collapse** was addressed first by **Professor Alan Lawton** of the University of Hull. One should consider the nature of the failure - individual or systemic, and what caused it - pressures, lack of understanding or personal differences. Motives and opportunities should be considered and the impact on individuals, the local authority and the public. Monitoring officers needed courage to do their job. There were impacts on reputation, performance, legitimacy and credibility as well as impacts on perceptions, trust, and willingness to stand for election. Was a local authority willing to learn? There was need to take control, involving goals, procedures, processes, leadership and engagement with stakeholders. **Kim Ryley**, Chief Executive of Shropshire Council, said things were excellent. **Pete Moore**, Executive Director for Resources and Community Safety, Lincolnshire County Council, said that in his authority in 2002 there had been a climate of fear, suspicion and mistrust, but no action had been taken. The Leader had been sent to gaol for misconduct in public office. His successor had to resign and was disbarred by SBE. A corporate governance report in 2005 had been inadequate. Sir Les Elton was appointed to chair the Lincolnshire County Council Improvement Board and embarked on relationship building with bravery and risk taking. There was media briefing, web-casting and information on the website. A councillor development charter was achieved. There had been need for effective member/officer partnership. Hard times were coming. A speaker from the floor (Hill) said that government intervention was not always helpful. Politicians needed to accept friendly advice. Were members and chief executives prepared to do this? Standard Committees should ensure that principles permeated all local authority activities.

A workshop followed on **Other Action: examples and results**. There had been 345 cases in 2008 of other action, and 53 cases in the first two quarters of 2009. **Fiona McMillan**, Senior Lawyer, South Cambs, said that her authority had dealt with twenty complaints. One concerning failure to declare an interest had resulted in other action. In a case where the Clerk was disregarded training had been required for the whole PC, with no further problems after a year. Other action was suitable for systemic problems. It was impossible to refer a case back to the Assessment Sub-Committee. Other action included cases where there was no decision as to where there had been fault. Failure to comply with other action could constitute a further breach and could be referred back to the MO. She was often involved in informal other action.

Other action was not appropriate when the fault had been admitted and apology given. Formal mediation might be too expensive. Regulation 1b allowed reference back to SC during investigation if evidence was found that could have resulted in a different decision. *[Other speakers do not seem to have said anything worth recording.]*

The final workshop was on **Managing investigations with confidence**. **Nicole Jackson**, Monitoring Office of Leeds City Council, was the speaker. Leeds City Council had 99 members in five political parties and included 33 PCs. The SC had seven councillors, four independent members and three parish councillors. They had dealt with 33 complaints. There had been nine investigations, one of them by SfE, but only three had been completed. Time taken varied from four to thirteen months. The first two investigations had concerned the Chief Conservative Whip and his wife, who was also a councillor. Investigations had been put out to two local firms of solicitors. Commissioning took a long time. It was advisable to make arrangements and contingency plans in advance. An insurance policy was provided for members, consisting of free legal representation for a month, but subject to some fee if there was a guilty finding. All key documentation must be assembled to send to the investigator. There was now a standard test list. There had been a lack of clarity about what the investigator was asked to do. Should a draft report include evidence? It was now clear that a letter of appointment was needed including the procedure to be followed. The investigator should be told of any unexpected discovery. Such an outside person needed one key internal contact. It had happened that lack of progress was not reported and receipt of the commission had been forgotten. A plan was necessary with key dates for progress - any variations needing to be reported. There had been faults in the report received. Complaints about the contents of the draft report must go to the MO. The 2000 Act, s.63, concerning disclosure of information during the investigation, was a nightmare. A six-monthly anonymised report was now given to the SC. A feedback was requested from the investigator at the end as to how the Council could have done better. The complainant and the subject member were each asked how it went for them. It was advisable to get all arrangements in place before there was any complaint, together with contingency plans. An investigation plan should be used and monitored.

Michael Farrar